Supreme Court, U.S.
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OFFICE OF THE CLERK

Docket No. ____
SUPREME COURT OF UNITED STATES COURT

ERIC RINGSRED, an individual,

Petitioner,

vs.

PETITION FOR WRIT OF CERTIORI

(1) **CITY OF DULUTH**, a municipal corporation; and the following City officials individually and in their official capacities: (2) Gary L. Doty, Mayor; (3) Cynthia Albright, Assistant City Attorney; (4) Brian Brown, City Attorney; (5) Robert Asleson, Assistant City Attorney; (6) John Schweiger, Special Projects Manager; (7) John Smedberg, Assistant City Attorney (8) **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, and its Director, Cynthia Albright, individually and in her official capacity;
(9) **TEAM DULUTH**; (10) **SOFT CENTER-DULUTH, INC.**; (11) Michael McNamara; (12) **THE DULUTH AREA CHAMBER OF COMMERCE**, and (13) its CEO David Ross,

Respondents.

On Petition for Writ of Certiori to the United States Court of Appeals for the Eighth Circuit

Eric Ringsred (*pro se*)
701 West Arrowhead Road
Duluth, Minnesota 55811
218-724-4243

106 pp

I. QUESTION FOR REVIEW

Was the federal court correct in holding that a so-called "public interest litigant," such as a person suing on behalf of the public under state environmental legislation, has no Constitutional rights regarding due process, equal protection, and fair access to the courts when it comes to such litigation?

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II. PARTIES

All named in caption.

III. CORPORATE DISCLOSURE STATEMENT

None.

IV. CITATION OF DISTRICT COURT DECISION, APPELLATE DECISION

(1) **United States District Court, District of Minnesota (Civ No. 00-2241)**

(2)**United States Court of Appeals for the 8th Circuit (Case #02-1242)**

V. BASIS FOR JURISDICTION

Petitioner requests review of a final judgment of the Eight Circuit Court of Appeals entered on June 27, 2002, as provided by 28 USC 1254.

VI. LAWS INVOLVED IN THE CASE

1. **United States Constitution**

AMENDMENT I: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, or to petition the Government for a redress of grievances.

AMENDMENT XIV - Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of

the United States; nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

2. **Minnesota Environmental Rights Act (MERA) M.S. 116(B).01 *et seq*; Minnesota Environmental Policy Act (MEPA) M.S. 116(D).01 *et seq*** [*See* Apx. pp. 55-79]

STATEMENT OF THE CASE

Eric and Deborah Ringsred on September 28, 2000, brought suit in Federal Court, District of Minnesota under 42 USC 1983 and 28 USC 1343 alleging violation of Constitutional Rights by the City of Duluth, et al.

Specifically the Complaint alleges that Respondents intimidated, coerced, defamed, and pre-empted E. Ringsred and his environmental litigation against them in 1998 by their extraordinary actions. For example, E. Ringsred alleges that in retaliation for his for environmental litigation, the City *et al.* attacked and defamed him in the news media, intimidated witnesses, and threatened him and his supporters such as witness Sheldon Aubut, who stated in his affidavit (Dkt. No. 72):

"I took the threat seriously and understood it to mean that if I helped Dr. Ringsred in his litigation, or was perceived as doing so, I would be at risk of being physically harmed.

The Complaint was dismissed with prejudice by Magistrate's Recommendation (Apx. pp. 1-48), which was affirmed by the District and Appeals Courts, upon the following grounds:

1. that as a matter of first impression, public interest litigation, such as E. Ringsred's under Minnesota Environmental Law, is not protected by United States Constitutional guarantees of due process, access to Court, etc., which normally protect "private" litigation.

2. that Ringsred's federal civil rights claims amounted to an impermissible appeal of a state court decision (Apx. pp. 80-87) not to proceed with contempt hearings against the City, such an appeal violating the "*Rooker-Feldman*" doctrine and 28 USC 1257[1].

---

[1](See *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *Lemmonds v. St. Louis County*, 222 F.3d 488, 492-93 (8th Cir. 2000)

SUMMARY OF ARGUMENT

Where a state statute creates the right of citizens to bring suit to protect certain matters of public interest, a person who brings such a suit must have essentially the same Constitutional protections against governmental abuses as in any other circumstance. Otherwise, the government can subvert the right to the detriment of both the individual and the public by denying due process, equal protection, and fair access to the courts. That is exactly what the City of Duluth and other Respondents have done here, where they viciously attacked anyone who challenged them in court, with "old-fashioned" threats, punishments, preemptive demolitions, and blatant character assassination.

Even though it is an unpublished decision (despite expressly noting that it addresses an issue of first impression) the decision of the Minnesota District Court, and summary affirmance by the Eighth Circuit, is legally wrong and, frankly, knocks the legs out from under anyone who would ever want to bring public interest litigation.

V. ARGUMENT

1. Eighth Circuit Has Wrongly Decided an Important Federal Issue: Does Public Interest Litigation Enjoy the Same Constitutional Guarantees as Private Litigation?

The Magistrate's opinion adopted by the Eighth Circuit states, "as a matter of first impression," (*see* Apx. p. 16) that a litigant such as Ringsred acting in the "public interest," with standing to do so under State environmental law, has no constitutional rights to due process, "access to court," equal protection, etc. Their opinion says (Apx. p. 23):

> In effect, any property, or liberty interest held by Ringsred, in prosecuting that case, was of a type shared by every citizen in the State of Minnesota, in whose stead he litigated the case. As a consequence, if any property or liberty interest was impaired, it was the interest of the State of Minnesota, which does not here join in the Plaintiffs' Section 1983 claim."

The opinion goes on to state that Ringsred is merely acting as an attorney for the State of Minnesota or the public at large (Apx. p. 26-27):

> If any property, or liberty interests were impaired by the Defendants' conduct, of which the Plaintiffs now complain, they were those of the State of Minnesota, whose rights, and interests, Ringsred voluntarily elected to pursue on a representational basis. We can see no meaningful distinction between Ringsred's role in the State Court action, and the private attorneys' role in *Curtain vs. FDIC*, 856 F.2d 255 (8th Cir. 1989)

This Eighth Circuit decision conflicts with other courts which have followed precepts of the Supreme Court, explicitly giving the highest priority to the "right to petition" on matters of public concern *(see Lehmuller v. Incorporated Village of Sag Harbor*, 944 F.Supp. 1087, 1095 (E.D.N.Y. 1996).

Other courts have accorded this constitutional right to "public interest" groups, without directly commenting on the specific entitlement to the right. *See White v. Lee*, 227 F.3d

1214 (9th Cir. 2002) *Greenwich Citizens Comm. v. County of Warren*, 77 F.3d 26 (2nd Cir. 1996).

The Eighth Circuit must conform to the traditional constitutional interpretations of the Supreme Court and other circuits.

These decisions in other circuits are well in keeping with the Supreme Court's longstanding interpretation of First Amendment rights:

> The right to sue and defend in the Courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies and the foundation of orderly government. It is one of the highest and most essential privileges of citizenship . . .

Chambers v. Baltimore and Ohio Railroad, 207, U.S. 142, 148, 28 S.Ct. 34, 35 (1907)

> Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but one aspect of the right of petition.

California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510, 92 S.Ct. 609, 612 (1972).

> The Supreme Court has described the right to petition as "among the most precious of the liberties safeguarded by the Bill of Rights" and "intimately connected, both in origin and in purpose, with the other first amendment rights of free speech and free press." *United Mine*

> *Workers of America, Dist. 12 v. Illinois State Bar Ass'n.*, 389 U.S. 217, 222, 88 S.Ct. 353.19 L.Ed. 2d 426 (1967). It is "cut from the same cloth as the other guarantees of [the First] Amendment, and is an assurance of a particular freedom of expression." *McDonald v. Smith*, 472 U.S. at 482, 105 S.Ct. 2787.

White v. Lee, 227 F.3d 1214, 1231 (9th Cir. 2000).

> Although the right to petition and the right to free speech are separate guarantees, they are related and generally subject to the same constitutional analysis (*citations omitted*).

Wayte v. United States, 470 U.S. 598, 610, 105 S.Ct. 1524, 1532, note 11.

> This Court has recognized that expression on public issues "has always rested on the highest rung of the hierarchy of First Amendment values." *Carey v. Brown*, 447 U.S. 455, 467, 100 S.Ct. 2286, 2293, 65 L.Ed. 2d 263.

NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913, 103 S.Ct. 3409, 3425 (1982). *See also Connick v. Meyers*, 461 U.S. 138, 144-147, 154, 103 S.Ct. 1684,1688-1684, 1689, 1693-94) (1983).

The very idea put forth by the Eighth Circuit "as a matter of first impression," that citizen Ringsred has no constitutional right to petition "in matters of public concern,"

or "in the public interest," but only regarding his private interest seems dubious on its face.

Taken to its logical conclusions, the Eighth Circuit decision means the City could harass a "public interest" litigant or petitioner to no end, viciously retaliate against them, or enact laws against them and their activities, without violating any federally-protected rights.

2. **The Eight Circuit Ignores *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148 (1982).**

When the city preemptively destroyed historic buildings, on two separate occasions, just hours before court hearings to decide upon their protection, not only in their haste did they break Minnesota laws requiring demolition permits, competitive bidding, and government approval of the expenditures – they also effectively deprived Ringsred of his "day in court."

But the Eighth Circuit denies Ringsred any constitutionally protected property interest in those hearings, or any other aspect of his state court litigation.

This contradicts the specific pronouncement of the Supreme Court in *Logan, supra*, and other cases cited therein, that a cause of action is a species of property protected by the Fourteenth Amendment and the First Amendment's Right of Access:

> The first question, we believe, was affirmatively settled by the *Mullane* case itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause.

455 U.S. at 428, 102 S.Ct. at 1154.

> This conclusion is hardly a novel one. The Court has traditionally hld that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances.
>
> * * *
>
> Similarly, the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures. . .
>
> * * *
>
> Footnote 5: The Court's cases involving the right of access to courts provide an analogous method of analysis supporting our reasoning here.

455 U.S. at 429, 102 S.Ct. 1154.

> As our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged.

Id. at p. 433.

> [This] requires "*an opportunity* . . ." granted at a meaningful time and in a meaningful manner" . . . "[For a] hearing appropriate to the nature of the case." *Boddie v. Connecticut*, 401

U.S. 371, 378, 91 S.Ct. 780, 786, 28 L.Ed. 2d 113.

Id. at pp. 423 and 1151.

This right to a hearing on the matter was violated by the City, not inadvertently nor by accident. The City's preemptive destruction of historic properties was intentional, arrogant, and totally out of line for governmental behavior notwithstanding the United States Constitution. *Boddie v. Connecticut*, supra, affirms at page 785:

> Persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.

3. **Ringsred's Undisputed Private Property Interests in the Outcome of the State Court litigation Have Also Been Extinguished**

Apparently, because Ringsred's State Court litigation occurred under State Environment Law, with public interests at stake, Ringsred's standing as a private property owner is negated:

1. Ringsred owned property (Temple and Norshor Theater buildings) actually within the "Duluth Commercial Historic District" which he sought to protect in state litigation (Dkt. No. 73).

2. Ringsred owned a leasehold in one of the demolished historic buildings (Dkt. No. 73).

3. Ringsred personally paid his costs in the state litigation and a Two Thousand Dollar ($2,000) penalty for

delay in joinder of one of the Defendants (Dkt. No. 51, Exh. 5).

CONCLUSION

Eric J. Ringsred, a physician, past political office holder, civic activist, major property owner/restorationist in Duluth's historic and arts district, by pronouncement of the Eighth Circuit, no longer has a constitutional right to petition or litigate on matters of public concern. Nor does anyone else in the Eighth Circuit as things now stand.

In the words of the Court itself (Apx. pp. 23, 24, 37):

> [A]ny property, or liberty interest held by Ringsred, in prosecuting that case, was of a type shared by every citizen of the State of Minnesota, in whose stead he litigated the case.
>
> * * *
>
> The Plaintiffs' claimed denial of access to the Courts can fair no better, as the interests that Ringsred was pursuing in the State Courts were representational interests, and not those he had a right to litigate in his own stead.
>
> * * *
>
> In sum, on the Record presented, we find no denial of due process, procedural or substantive, nor any denial of access to the Courts, and therefore, we recommend that the Plaintiffs' cause of action be dismissed on jurisdictional grounds as we are without the requisite subject matter jurisdiction to entertain the Plaintiffs' Section 1983 claims.

In the Eighth Circuit, private citizens no longer have the right to petition, as afforded by state law under MEPA (*see* MS 116D.04, subd. 2a, Apx. pp. 72-3), nor to litigate under MEPA (MS 116D.04 subd. 10 Apx. pp. 77-8) nor MERA (*see* MS 116B.03 and 10 (Apx. pp. 53 and 63). Nor to challenge by petitioning or litigation, other public interest issues: zoning decisions, legislative redistricting, taxation, voting and election issues, administrative rule making, initiative and referendum (by petition), etc.

A person may have sufficient passion to challenge city government for violating environmental and historic preservation laws. The State may pass statutes allowing individuals to litigate on behalf of such public interests. But in reality city government is extremely powerful against an individual. If the district court and the Eighth Circuit were correct in holding that public interest litigants have no constitutional protections in petitioning or conducting such litigation, then it's not just a major uphill battle, it's a foolhardy personal risk. The city government and its cronies can and will, as they have done here, trample individual rights with no basis for federal review of their abuse of power.

Dated 9/24/02

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APPENDIX

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1. REPORT OF MAGISTRATES REPORT APPEAL FROM DISTRICT OF COURT FOR THE DISTRICT OF MINNESOTA **1**

2. EIGHTH CIRCUIT ORDER JUDGE RICHARD H. KYLE **48**

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7. MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT, MEMORANDUM ATTACHED SIGNED BY TERRY C. HALLENBECK, DISTRICT COURT JUDGE **80**

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

* * * * * * *

Eric Ringsred, an individual and a state, federal and local taxpayer, State of Minnesota, by Eric Ringsred, and Deborah Ringsred,

Plaintiffs,

vs.

City of Duluth, a municipal corporation, and the following City Officials, individually and in their official capacities, Mayor Gary L. Doty; Cynthia Albright, Assistant City Attorney; Brian Brown, City Attorney; Robert Asleson, Assistant City Attorney; John Schweiger, Special Projects Manager; John Smedberg, Assistant City Attorney; Duluth Economic Development Authority, and its Director, Cynthia Albright, individually and in her official capacity; Team Duluth; Soft Center-Duluth, Inc.; Michael McNamara; Duluth Area Chamber of Commerce and David Ross, CEO,

Defendants Civ. No. 00-2241 (RHK/RLE)

At Duluth, in the District of Minnesota, this 22nd day of October, 2001.

I. Introduction

This matter came before the undersigned United States Magistrate Judge pursuant to a special assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(A) and (B), upon the numerous Motions of the parties. As there are a number of different Defendants in the case, for the sake of clarity, we first categorize the Defendants into relevant groupings, and then proceed to delineate the Motions of the parties.

The first cluster of Defendants may be denominated as the "Government Defendants," which includes the City of Duluth and its City officials, in both their individual, and official capacities; namely, Gary Doty, Cynthia Albright, Bryan Brown, Robert Asleson, John Schweiger, and John Smedberg, together with the Duluth Economic Development Authority ("DEDA"). A second grouping may be designated as the "Soft Center Defendants," to include the Soft Center-Duluth, Inc., and Michael McNamara, as an employee of Soft Center-Duluth. The last category is comprised of the "Chamber Defendants," which includes the Duluth Area Chamber of Commerce, Team Duluth, David Ross and, in a separate capacity, Michael McNamara. The Plaintiffs, and each grouping of Defendants, have filed Motions which we list as follows:

1. The Motion of the Government Defendants to Dismiss or, in the alternative, for Summary Judgment.

2. The Motion of the Plaintiffs[1] to Compel the Appearance of the Individual Government Defendants at a Deposition, and the Obverse Motion of the Individual Government Defendants for a Protective order.[2]

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[1]City of Duluth, Gary Doty, Cynthia Albright, Bryan Brown, Robert Asleson, John Schweiger, and Duluth Economihe Plaintiff Eric Ringsred ("Ringsred"), brings this action on his own behalf, both as an individual, and as a Federal, state, and local taxpayers, as well as on behalf of the State of Minnesota. Deborah Ringsred, who is the wife of Ringsred, has asserted a claim for the loss of quantity and quality of time with her husband, as well as injuries suffered as a result of damage to Ringsred's reputation. Deborah Ringsred has not expressly joined in advancing the Motions filed by Ringsred, as she has not signed any of the Motion papers, nor has she argued any Motion in open Court. Accordingly, we will address the Plaintiffs' position jointly, except when we consider one of their claims which affects either of them individually.

[2]On April 3, 2001, the Plaintiffs served deposition notices on the individual Government Defendants, which set the dates of their depositions for April 23 through April 25, 2001. Thereafter, on or about April 22, 2001, the Government Defendants served their Motion to Dismiss or, in the alternative, for Summary Judgment, which was based, in part, on a claim of qualified immunity. They consequently advised the Plaintiffs that they would not appear for the noted depositions.

Instead of filing a timely responsive pleading to the Motion to Dismiss, the Plaintiffs filed a Motion to Compel the Government Defendants to appear for their depositions. In turn, the Government Defendants filed a Motion for a Protective Order, which sought protection from being deposed, and which urged that, since their dispositive Motion was predicated on a claim of qualified immunity, they should be shielded from suit for their discretionary governmental acts, unless their conduct should violate clearly established statutory or constitutional rights of which a reasonable person would have known. See, Wilson v. Layne, 526 U.S. 603, 609 (1999), citing Harlow v Fitzgerald, 457 U.S. 800, 818 (1982). The defense of qualified immunity protects not only against liability, but also against litigation.

(continued...)

3. The Motion of Plaintiffs to File an Untimely Memorandum in Opposition to the Governmental Defendants' Motion for Dismissal.[3]

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[2](...continued)
See, Hunter v. Bryant, 502 U.S. 224, 227 (1991), citing Mitchell v. Forsyth, 472 U.S. 511, 526 (1985); Engle v. Townsley, 49 F.3d 1321, 1323 (8th Cir. 1995); Moore v. Webster, 932 F.2d 1229, 1232 (8th Cir. 1991). Thus, Courts have tailored Protective Orders to prevent unnecessary discovery into the merits of a plaintiff's claim, while still allowing discovery regarding the qualified immunity defense. See, Maxey v. Fulton, 890 F.2d 279, 282 (10th Cir. 1989); Felak v. United States, 661 F.Supp. 51, 53-54 (D. Minn. 1987); c.f. Haenchen v. Riley, 994 F.2d 842, 1993 WL 169051 at *1 (8th Cir. 1993) ("However, we note that discovery is appropriate where the 'parties disagree as to what actions the law enforcement officers took and if the plaintiff can present some evidence to support [his] allegations.'") [unpublished decision]. Otherwise, such discovery on the merits of a claim would only erode the qualified immunity defense. See, Maxey v. Fulton, supra at 281.

As the Governments' Motion for a Protective Order was to prevent discovery pending the Court's decision on the Motion to Dismiss, it is now mooted by the Recommendation we make. Thus, we deny the Plaintiffs' Motion to compel depositions, as well as the Government Defendants' Motion for a Protective Order, as moot, but without prejudice to their renewal, if otherwise warranted, should our Recommendation be rejected by the District Court.

[3]The Plaintiffs were obligated to serve and file their responsive Memorandum to the dispositive Motion of the Government Defendants on May 17, 2001. however, due to an apparent misunderstanding on the Plaintiffs' part, they did not file their Memorandum until May 22, 2001, and they requested leave to file their untimely submission on that same day. In the interests of being fully informed, we previously granted the Plaintiffs' Motion to File their untimely Memorandum, and now formally record that ruling.

4. The Motion of the Government Defendants for Leave to File an Untimely Reply Memorandum.[4]

5. The Motion of Plaintiffs to Amend the Scheduling Order of December 1, 2000, so as to Allow an Amendment of the Complaint, and their Motion to Amend Their Complaint.[5]

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[4]Owing to the Plaintiffs' late filing of their Memorandum in Opposition to the Government Defendants' Motion to Dismiss, the Government Defendants requested leave to file an untimely Reply Memorandum and, since the Government Defendants' Reply is untimely, through no fault of their own, we previously granted this Motion, and now formally record that ruling.

[5]This is the Plaintiffs' second attempt to amend their Complaint, and follows our earlier rejection of their first attempt as being both untimely, and futile - - a decision which was adopted by the District Court. As explained by the Plaintiffs, they believe that an amendment of their Complaint would disarm much of the dispositive Motion of the Government Defendants, which is premised, in part, on the shortcomings of the Plaintiffs' Complaint.

In our Scheduling Order of December 1, 2000, the deadline for amending the pleadings was set for February 1, 2001. Where, as here, the deadline for the amendment of pleadings has since expired, the propriety of a Motion for leave to amend "is most properly considered within the framework of Rule 16(b), Federal Rules of Civil Procedure." Alholm v. American Steamship Co., 167 F.R.D. 75, 77 (D. Minn. 1996). Thus, the Plaintiffs must show the "good cause," which is required by Rule 16(b), if they are to be allowed to amend their Complaint on an untimely basis. Rule 16(b), Federal Rules of Civil Procedure ("A schedule shall not be modified except upon a showing of good cause * * *."). Once again, the Plaintiffs have failed to demonstrate good cause for their belated Motion to Amend.

While the Plaintiffs contend that the Motion of the Government Defendants to Dismiss was untimely, they are mistaken, as the applicable dispositive Motion deadline was September 15, 2001, and the Motion was heard well in advance of that date. Moreover, the bases for the Governmental Defendants' Motion were not waived, as the Plaintiffs argue, as those grounds for dismissal were

(continued...)

6. The Motion of the Soft Center Defendants for Summary Judgment.

7. The Motion of the Chamber Defendants for Summary Judgment.

8. The Motion of the Government Defendants for Rule 11 Sanctions.

9. The Informal Motion by the Defendants to Strike.[6]

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[5](...continued)
asserted in their respective Answers to the Plaintiffs' Complaint. See, Rule 12(b), Federal Rules of Civil Procedure ("No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleadings or motion."). More importantly, the Plaintiffs had notice that the Government Defendants found their Complaint substantially lacking, as the issue was addressed at the Initial Pretrial Conference. The Plaintiffs' first attempt to amend their Complaint, while late and largely futile, was an attempt to cure the deficiencies which were then noted. Thus, if the Plaintiffs had asserted such a Motion to Amend in a timely fashion, they would have been afforded an opportunity to clarify their claims, and add others, so long as those claims were not legally futile. Accordingly, finding no good cause to allow the requested late amendment, we deny the Plaintiffs' Motion to Amend the Scheduling Order and, resultantly, their second Motion to Amend their Complaint.

[6]On July 19, 2001, this Court heard the Motion by the Chamber Defendants for Summary Judgment, as well as the Government Defendants' Motion for Rule 11 Sanctions. Thereafter, on July 31, 2001, and again on August 13, 2001, the Plaintiffs submitted additional materials for the Court's consideration. The materials address many of the issues raised in the three Hearings before this Court. As a consequence, the Defendants request that the additional materials be stricken from the Record. While we did invite the Plaintiffs to submit any additional authority, following the Hearings of July 19, 2001, we granted such leave with respect to the issues raised during that Hearing. Further, we did not invite the submission of new evidence, but only such case authority as they felt supported their arguments at the Hearing. Therefore, we have considered the relevant case authorities presented in the Plaintiffs' of

(continued...)

Hearings on the Motions were conducted on May 31, 2001, June 28, 2001, and July 19, 2001, at which the Plaintiffs appeared pro se; the Government Defendants appeared by M. Alison Lutterman, Assistant Duluth City Attorney; the Soft Center Defendants appeared by Faye M. Witt and James A. Wade, Esqs.; and the Chamber Defendants appeared by R. Thomas Torgerson, Esq.

As to the Motions which remain for disposition, we recommend that the Motion of the Government Defendants to Dismiss, for want of subject matter jurisdiction be granted; that the Motions for Summary Judgment of the Soft Center Defendants, and of the Chamber of Defendants, be granted; and we deny the Motion of the Government Defendants for Rule 11 Sanctions.

II. Factual and Procedural History

The Plaintiffs bring this action under Title 42 U.S.C. §1983, and allege that the Defendants have violated various Federal, State and local laws, and have infringed upon their Federal constitutional rights. The crux of their claims arise from certain actions which, allegedly, were taken by the Defendants during prior litigation involving both the Plaintiff Eric Ringsred ("Ringsred"), and a number of the Defendants here. Specifically, in May of 1998, Ringsred brought suit in Minnesota District Court, on behalf of the State of Minnesota, and against the City of Duluth, DEDA, Mayor Gary Doty, and others, under the Minnesota Environmental Rights Act, Minnesota Statutes Section 116B.01 et seq. ("MERA"), According to Ringsred, the purpose of that earlier suit was to protect buildings, which were located in the "Duluth Commercial Historic District," from a demolition designed to

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[6](...continued)
the newly presented factual materials and, to that extent, we grant the Defendants' informal Motion to Strike

make space for the erection of the "Soft Center/Technology Village" project.

Ringsred's suit, on behalf of the State, was premised upon the following Minnesota statutory provisions:

> Any person residing within the * * * may maintain a civil action in the District court for declaratory or equitable relief in the name of the State of Minnesota against any person, for the protection of the air, water, land or other natural resources located within the state, whether publicly or privately. from pollution, impairment, or destruction; provided, however, that no action shall be allowable hereunder for acts taken by a person on land leased or owned by said person pursuant to a permit or license issued by the owner of the land to said person which do not and can not reasonably by expected to pollute, impair, or destroy any other air, water, land, or other natural resource located within the state.

Minnesota Statutes Section 116B.03, Subdivision 1[7]

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[7]Ringsred's State Court action was also predicated on the following statutory provisions:

> Decisions on the need for an environmental assessment worksheet, the need for an environmental impact statement and the adequacy of an environmental impact statement may be reviewed by a declaratory judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken.

(continued...)

In particular, Ringsred sought, on behalf of the State of Minnesota, to enjoin the "Soft CenterTechnology Village" project, and to require the City to prepare an Environmental Impact Statement ("EIS"). The Trial Court issued two Temporary Restraining Orders, and then held a Trial on the merits during September and October of 1998. On October 5, 1998, the Trial Court issued an Order, which found that area in dispute - - the 0 - 100 block of East Superior Street, which was referred to as "Old Downtown" -- constituted a "natural resource"[8] under MERA.[9]

Notwithstanding that ruling, however, the Trial Court also determined, after conducting the equivalent of an Environmental Assessment Worksheet ("EAW"), that the Soft Center/Technology Village project should proceed. The Court reasoned that the project would not have a significant impact on the denoted "natural resource" and, further, that any effect would further diminish over time. The Court also found that

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[7](...continued)
Minnesota Statutes Section 116D.04, Subdivision 10.

[8]MERA defines "natural resource" as follows:
> Natural resources shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources.

Minnesota Statutes Section 116B.02, Subdivision 4.

[9]It appears that the actual portion of "Old Downtown," which the Trial Court deemed a "natural resource," is larger than the to 0 to 100 block of East Superior Street, although the exact dimensions are not known to this Court. See, State of Minnesota, by Ringsred v. City of Duluth, C3-98-601186, Findings of Fact, Conclusions of Law and Order for Judgment, at 37 (Minn. Dist. Ct. October 5, 1998). However, as pertinent to this case, we are concerned primarily with the activities in the 0 to 100 block - - that is, the epicenter of the Soft Center/Technology Village Project - - as those activities were the core of Ringsred's State Court proceeding.

there was no feasible alternative site, in the City, for the project, and that the project would yield substantial economic and educational benefits to the City, and its citizens. Thus, the Trial Court allowed the project to advance, thereby allowing the demolition of five buildings, located on the future site of the project, but imposing a mandatory injunction which required the defendants, in that case, to confer the 0 to 100 of East Superior Street with the environmental protections befitting a "natural resource."[10] Ringsred appealed the Trial Court's Order to the Minnesota Court of Appeals, which affirmed the Trial Court's decision in all respects. See State of Minnesota, by Ringsred v. City of Duluth, 1999 WL 618613 (Minn. App. August 17, 1999) [publication page reference not available]. No further appeal was taken.

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[10] In pertinent part, the Trial Court ordered:

> That portion of Duluth detected upon the outlined portion of Exhibit 23, attached hereto as Attachment A, consisting of a historical resource and therefore being a "natural resource," defendants and each of them, are ordered and directed to accord such district so delineated and any structures located therein constructed between 1880 and 1930 those protections accorded to natural resources under Minnesota environmental laws including, without limitation, chapters 116B and 116D of the Minnesota statutes. Such protection shall be accorded as any and all activities are carried out by them or under their direction or control with regard to or as a part of the construction of the Soft Center project including: the Soft Center building, the related parking ramp, the related skywalk, utilities and any and all other construction or demolition activities related to the Soft Center project within or affecting the delineated district set fourth on attachment A hereto.

By way of additional background, in September and October of 1998, prior to the Trial of the State Court action, Ringsred sought a Temporary Restraining Order so as to prevent the destruction of the Strand Theater, which was located within the area that was ultimately determined, by the Trial Court, to be a "natural resource," but it was not one of the five buildings which were scheduled for demolition at the site of the planning Soft Center/Technology Village. See, Affidavit of Robert Asleson, at ¶1. Nonetheless, Ringsred sought a Temporary Restraining Order in order to protect the Strand Theater from destruction. As alleged by Ringsred, when the defendants in the State Court action learned about his Motion, they preemptively destroyed portions of the Strand Theater. Although the Temporary Restraining Order was later issued, it was subsequently lifted because, as related by Ringsred, the Court found that there had already been substantial damage to the building, and there was, as alleged by Ringsred, perjured testimony, from the City, that no buyers could be found for the property.

Ringsred further contends that, during the Trial of the State Court action, the defendants in that case conducted meetings with individuals who were listed as witnesses for Ringsred, and also conducted an advertising campaign to promote the Soft Center/Technology Village. Ringsred asserts that, in one instance, the State Court defendants attempted to prevent one witness, Jill Fisher ("Fisher"), from testifying at the Trial, and threatened another witness, Sheldon Aubut ("Aubut"), with physical injury and damage, because of his testimony. There is no allegation, however, let alone a showing, that either witness did not testify at the Trial, or that either one of them gave false testimony as a result of the purported threats.

In December of 1998, Ringsred returned to the State Court, and sought a Temporary Restraining order to enforce,

in effect, the mandatory injunction that the Trial Court had issued as part of its Order of October 5, 1998. According to Ringsred, the defendants were set to demolish three buildings, which he believed fell within the confines of the mandatory injunction, but which the defendants had failed to treat as a "natural resource," as required by the State Court's mandatory injunction. Ringsred maintains that the Hearing on that Motion was to occur at 10:00 o'clock a.m., on December 28, 1998, but that the defendants preemptively demolished the three buildings at 10:00 o'clock a.m., without a building demolition permit, without soliciting competitive bids, and without governmental approval of the expenditure. Notwithstanding Ringsred's assertions, the State Court denied the Temporary Restraining Order, as being without a sufficient showing for the equitable relief that Ringsred was requesting. See, State of Minnesota, by Ringsred v. City of Duluth, C3-98-601186, Order, at 3 (Minn. Dist. Ct. December 28, 1998).[11] Indeed, in its decision of August of 1999, the Minnesota Court of Appeals expressly observed that "the trial court ha[d] issued a mandatory injunction as to the remainder of the [Soft Center] project and Ringsred has made no showing that respondents have violated the law or the trial court's mandate," and that "Ringsred has shown no environmental violation as to the work in process." State of Minnesota, by Ringsred v. City of Duluth, 1999 WL 618813 (Minn. App. August 17, 1999) [publication page references not available].

In December of 1999, Ringsred filed, in State Court, a Motion for an Order to Show Cause, and an Application for Sanctions, against the defendants, there, contending that they

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[11]The Orders of the State Courts which dealt with Ringsred's earlier claims, and certain of the Motion papers, and papers on Appeal, are attached to several Affidavits in this Record. Accordingly, we reference the document we cite, but do not specify one Affidavit, or another, as the repository of the document.

had violated various Minnesota Statutes, including the giving of false testimony concerning Federal funding for the Soft Center project, and regarding potential buyers and users for the Strand Theater; the preemptive demolition of the Strand Theater; the conduct of prejudicial pretrial meetings with Ringsred's witnesses; the dissemination of prejudicial pretrial publicity; the threatening of Ringsred's witnesses; the interference with the service of a subpoena on one of Ringsred's witnesses; the disobedience of the Court's mandatory injunction; the misrepresentation of facts during the Hearing on Ringsred's Motion for Temporary Restraining order; the demolition of a building without a building permit; the demolition of a building without authorization by the DEDA; the demolition of a building without taking competitive bids; and the attempt to "cover up" the failure to take competitive bids. See, State of Minnesota, by Ringsred v. City of Duluth, C3-98-601186, Affidavit of Eric Ringsred No. 3 to Motion for Order to Show Cause and Apply Sanctions. That State Trial Court denied Ringsred' request to sanction the defendants, or to have them show cause why they should not be held in contempt of that Court, because most of his allegations were based on hearsay, and because, in the court's view, a Motion for an Order to Show Cause, and for Sanctions, was an inappropriate means of raising such issues, as discovery would need to proceed if the claims were cognizable. The Court specifically noted that "[m]any of the issues which plaintiff raises could well be the subject of separate proceedings subject to the rights and responsibilities of the parties under our Rules of Procedure including those applicable to discovery." See, State of Minnesota, by Ringsred v. City of Duluth, Civ. No. C3-98-601176, Order Regarding Motion for Order to Show Cause and Contempt, at 7 (Minn. Dist. Ct. January 10, 2000). No appeal from the State Court's

denial of Ringsred's Motion for Sanctions, and for Contempt of Court, was taken.

The Plaintiffs have also alleged that, in January of 2000, the Defendants publicly accused Ringsred of "frivolous litigation." As phrased by the Plaintiffs, "[f]irst the local news media, then Ringsred himself, were notified of a threat by Defendants against him for Court sanctions to limit his ability to litigate issues of personal and public concern." Complaint, at ¶7.

Thereafter, on October 3, 2000, the Plaintiffs commenced this action, against the Government Defendants, the Soft Center Defendants, and the Chamber Defendants, contending that they had violated Ringsred's right of access to the Court, as guaranteed by the First Amendment, as well as the Due Process, and Equal Protection Clauses, of the United States Constitution. The Plaintiffs have further alleged, without specificity, that the Defendants have violated various Federal, State, and local laws, and have engaged in unlawful recruitment of local businesses for the Soft Center facility. In addition, the Plaintiffs assert that the Defendants actions have damaged the reputation of Ringsred, by stating, to the public, that Ringsred was conducting "frivolous litigation," and by threatening sanctions as a consequence of such frivolousness. Lastly, the Plaintiffs maintain that the conduct of the Defendants has caused injury to the family of Ringsred, such as emotional distress, loss of time, money, and effort. As a result, the Plaintiffs ask for the following damages:

1. Compensatory damages to Ringsred in excess of $50,000;

2. Damages for lost time, lost enjoyment of life and property, and emotional distress, both past and future;

3. Exemplary damages upon the Plaintiffs' Motion;

4. Damages to the people of the State of Minnesota by Ringsred, to be held in trust for the purpose of mitigation to the "Duluth Commercial Historic District," in the amount of $10 million; and

5. Exemplary damages to the people of the State of Minnesota by Ringsred, upon the Plaintiffs' Motion;

6. Damages to Deborah Ringsred for loss of reputation, and of quality and quantity of time given to her by Ringsred in the amount of $10,000;

7. A declaration that the Defendants' are not in compliance with the "Mandatory Injunction" issued by the State Court on October 5, 1998, and commanding future compliance;

8. An Order commanding detailed compliance with the State Court Order mandating conformance with MEPA and MERA in respect to proposed skywalk construction within the Duluth Commercial Historic District;

9. Exemplary damages to Federal, State, and local taxpayers, upon the Plaintiffs' Motion;

10. An award of costs, disbursements, reasonable attorney's fee or their equivalent, and such other relief as the Court deems just and equitable.

Complaint, at ¶¶35-40.

In response to the Plaintiffs' Complaint, the Government Defendants have moved to dismiss the Complaint, or for a grant of Summary Judgment, on a number of different bases, including a claimed lack of subject matter jurisdiction, a failure to state a claim upon which relief can be granted, and on the basis of qualified and absolute immunity.

The Soft Center Defendants, and the Chamber Defendants, seek Summary Judgment, as the Soft Center

Defendants contend that the Plaintiffs have not identified any complaints that they have against them and, together with the Chamber Defendants, contend that they were not acting "under color of state law" and, therefore, cannot be held liable under Section 1983. In addition, the Government Defendants seek Rule 11 Sanctions against Ringsred, arising out of his attempt to file of a second Motion to Amend the Complaint.

Notably, the Plaintiffs allege no occasion when they were unable to present claims, or evidence in support of any claim, to the State Court, or which they have declined to advance a claim, make an argument, or otherwise petition a Court for relief, on account of some fear of retaliation at the hands of the Defendants. Rather, the Plaintiffs suggest, by mere inference, that the result reached by the State Court would have been different had the Defendants not engaged in the acts of which they are accused. Insofar as we are aware, and our research has been extensive, this is a case of first impression.

Some learn from history, others are content to relive it. In this instance, any regression, so as to relitigate the past, is foreclosed by controlling Federal precedent. After a painstaking review of the Record presented, we an applaud the Plaintiffs for the novelty of their claims, but we conclude that none of their causes of action can survive the Defendants' dispositive Motions and, therefore, we recommend that those Motions by granted. Further, we deny the Government Defendants' Motion for Rule 11 Sanctions as being without merit.

III. Discussion

A. The Government Defendants' Motion to Dismiss, and/or for Summary Judgment.

The Plaintiffs' Complaint spans six pages, and contains five recognizable causes of action. Nonetheless, within those six pages, the Plaintiffs have seemingly included every

unfairness that they claim to have experienced, during the course of the State litigation, because of the acts of generic defendants, as well as numerous grievances that other, nonparties, have purportedly endured. By and large, the Complaint does not differentiate between the Defendants, or specifically identify which of the Defendants purportedly committed which misdeed.[12] Moreover, many of their allegations are so vague and sweeping, that they afford the Defendants with little notice, or forewarning, of the specific misconduct of which they are accused. For example, in their Second Cause of Action, the Plaintiffs state:

> Defendants individually and in combined agreement with each other by their actions above-noted, have negligently and intentionally violated civil and penal statutes including, but not limited to, professional conduct of attorneys, misconduct of public officials, coercion, witness tampering, competitive bidding for public projects, obstruction of justice, contempt of Court, abuse of legal process, and deceit-collusion-misconduct by attorneys, perjury, conspiracy to commit crimes, and failure to report misuse of public funds.

Complaint, at ¶13.

As the Plaintiffs have not cited any statutory, or other legal bases for such a claim, it largely falls of its own weight.

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[12]In fact, in only one instance do the Plaintiffs specifically mention a Defendant by name; specifically, the allegation that "Mayor Gary Doty has participated and encouraged violations of law and the U.S. Constitution, and abdicated his responsibility over subordinates to uphold the law and U.S. Constitution." Complaint, at ¶10.

Section 1983 disputes, which frequently are spawned in rage or insult, lend themselves to such imprecision and vagueness. As the Court observed, in Liggins v. Morris, 749 F. Supp. 967, 971 (D. Minn. 1990):

> Constitutional claims brought under Title 42 U.S.C. §1983 are discrete claims and as such should not be pled in this shotgun manner. Almost invariably, complaints using this format are met with motions to dismiss or summary judgment under Federal Rules of Civil Procedure 12(b)(6) and 56. It is then left to the court to divine what discrete constitutional violations are in fact legitimate and proper as to each plaintiff and as against each defendant. The court must and does ferret out and dismiss those alleged constitutional violations that patently cannot be maintained. This process is time consuming, fraught with frustrations for both the court and counsel, and disrupts the orderly processing of legitimate claims. Although Rule 8 provides for notice pleading, it demands greater specificity than that found in this complaint or in others pled in the same manner.

Id.

The Court, in Liggins, went on to hold that "[t]he time has come for practitioners in this district to prepare complaints alleging violations of 42 U.S.C. §1983 in a fashion that will identify the specific claims of individual plaintiffs for specific constitutional violations as against only culpable defendants," and that the failure to do so will result in dismissal "for failure to comply with Rule 8 and Rule 11 of the Federal Rules of Civil Procedure," Id.

Plainly, the Plaintiffs' Complaint contravenes the holding in Liggins, but we decline to apply the proscriptions of Liggins where, as here, the Plaintiffs are not represented by legal counsel,[13] thereby obligating us to ferret out any cognizable causes of action, and to address the merits of any such claims. Accordingly, following a recitation of the standard that governs our review, we turn to an analysis of the claims that the Plaintiffs have raised.

1. Standard of Review. The Government Defendants advance their Motion to Dismiss, in part, on Rule 12(b)(1) and (b)(6), Federal Rules of Civil Procedure. To succeed in a Motion to Dismiss for want of subject matter jurisdiction under Rule 12(b)(1), the challenging party must successfully attack the Complaint, either on its face, or on the factual truthfulness of its averments. See, Titus v. Sullivan, 4

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[13]We note, however, that, while not a licensed attorney, Ringsred is an experienced pro se Plaintiff - - a circumstance that has not eluded the State District Court which considered his previous claims, nor our prior ruling on the Plaintiffs' first Motion to Amend their Complaint. See, e.g., State of Minnesota, by Ringsred v. City of Duluth, Civ. No. C3-98-601186, Findings of Fact, Conclusions of Law and Order for Judgment, at 39 (Minn. Dist. Ct. October 5, 1998) ("at the outset the Court wishes to commend counsel and plaintiff who has proceeded herein pro se. Mr. Ringsred, although not an attorney by training or profession, conducted himself in a manner and with a degree of professionalism and candor that any attorney would do well to emulate."); Order and Report and Recommendation of March 14, 2001, at p. 14, n. 3 ("We note that Ringsred is an educated and articulate litigant, and is no stranger to legal proceedings, both when represented by legal counsel, and when proceeding pro se. See also, Ringsred v. Dole, 828 F.2d 1300 (8th Cir. 1987); Duluth Steam Cooperative Ass'n v. Ringsred, 519 N.W.2d 215 (Minn. App. 1994); State of Minnesota, by Eric Ringsred v. City of Duluth, 1999 WL 618613 (Minn. App., August 17, 1999)."). Notwithstanding our rejection of his causes of action, as being outside of our subject matter jurisdiction, we continue in the view that Ringsred has demonstrated a keen ability to research his claims, and to effectively argue their substance.

F.3d 590, 593 (8th Cir. 1993). In a facial challenge to jurisdiction, "we accept all of the factual allegations in the Complaint as true and ask whether, under those circumstances, [Federal subject matter jurisdiction exists]." Deuser v. Vecera, 139 F.3d 1190, 1191 (8th Cir. 1998), quoting Berkovitz v. United States, 486 U.S. 531, 540 (1988). A District Court also has the authority, in a Rule 12(b)(1) challenge to subject matter jurisdiction, to consider matters outside of the pleadings. Id. at 1191 n. 3, quoting Drevlow v. Lutheran Church, Mo. Synod, 991 F.2d 468, 470 (8th Cir. 1993; Maruska v. United States, 77 F. Supp. 2d 1305, 1037 n.2 (D. Minn. 1999).

In considering a Motion to Dismiss under Rule 12(b)(6), Federal Rules of Civil Procedure, we accept as true, in hypothetical sense, all of the factual allegations of the Complaint, and we view those allegations in a light most favorable to the nonmoving party - - here the Plaintiff. See, Anderson v. Franklin County, Mo., 192 F.3d 1125, 1131 (8th Cir. 1999); Riley v. St. Louis County of Missouri, 153 F.3d 627, 630 (8th Cir. 1998); Springdale Educ. Ass'n v. Springdale School Dist., 133 F.3d 649, 651 (8th Cir. 1998). Where, as here, the parties have presented the Court with matters outside of the pleadings, which the Court has not excluded, the Motion "shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Rule 12(b), Federal Rules of Civil Procedure. Here, the distinction may well be without a difference, for the "matters outside the pleading," which we have considered, are the materials generated in, by, or for, the Minnesota Courts which previously ruled upon Ringsred earlier State law claims and, therefore, as converted, the

Government Defendants' Motion, under Rule 12(b)(6), essentially replicates their Motion under Rule 12(b)(1).[14]

2. Legal Analysis.

a. The Plaintiffs' First Cause of Action.

In their First Cause of Action, which is only being asserted as an action on behalf of Ringsred, the Plaintiffs contend that the Defendants have denied Ringsred a fair Trial, and access to the Courts, as well as his right to procedural due process, because of the Defendants' conduct during the Soft Center/Technology Village litigation.

As to the procedural due process claim, the Plaintiffs contend that, through the preemptive demolition of the Strand Theater, and of the three additional buildings in December of 1998, the Defendants deprived Ringsred of his property rights

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[14]We note that the Plaintiffs interpreted the Government Defendants' Rule 12(b)(6) Motion as being one for Summary Judgment, so they can legitimately claim no surprise, see Memorandum in Opposition to Government Defendants' Motion to Dismiss, at p. 2, and the Plaintiffs never moved the Court, pursuant to Rule 56(f), Federal Rules of Civil Procedure, for a deferral of any ruling, nor did they offer any competent showing for such a deferral. More importantly, the matters we have relied upon, namely the pleadings before, and the rulings of, the Minnesota Courts which resolved Ringsred's earlier State action, are materials of which the Court could properly take judicial notice. See, Mir v. Little Co. of Mary Hosp., 844 F.2d 626, 649) (9th Cir. 1998), quoting MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504, (9th Cir. 1986) ("In addition to the complaint, it is proper for the district court to 'take judicial notice of matters of public record outside the pleadings' and consider them for purposes of the motion to dismiss."); see also, Piaubert v. Sefrioui, 208 F.3d 221 n.7, 2000 WL 194149 at *2 (9th Cir. 2000) [unpublished opinion]; City of Pittsburh v. West Penn Power Co., 147 F.3d 256, 259 (3rd Cir. 1998). In any event, the recommendation we make is more properly expressed as a dismissal, for want of subject matter jurisdiction under Rule 12(b)(1) and, as to that issue, the Plaintiffs have had a full opportunity to argue to that issue, the Plaintiffs have had a full opportunity to argue their position, and to present such matters, outside the pleading, as they wanted the Court to consider.

accorded by Minnesota Statutes Section 116B.01;[15] his rights afforded by the State Court's "mandatory injunction," which was issued in October of 1998; his real estate interest in the "natural resource," which was identified by the State Court' and his "cause of action" conferred by Minnesota Statutes Section 116B.03 - - or MERA.

In determining whether a plaintiff has properly asserted a claimed violation of due process, the first inquiry is into whether there exists a liberty or property interest which the defendants have denied to that plaintiff. See, Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989). Once we determine that a liberty or property interest has been implicated - - that is, one of constitutional dimension - - then we must determine what process was due before the Government could deprive the plaintiff of that interest. See Cleveland Bd. of Edu. v. Loudermill, 470 U.S. 532, 541 (1985). In this case, Ringsred's claim does not survive the first prong of the analysis, as we find no property, or liberty interest, which, under the circumstances presented, was personally held by Ringsred.

In supporting this aspect of their claim, the Plaintiffs rely upon the rights that were afforded to Ringsred by MERA,

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[15]Minnesota Statutes Section 116B.01 provides, in pertinent part, as follows:

> The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. * * * Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction

and the injunctions that were issued by the District Court, which were predicated on the provisions of MERA. As the caption of the State Court case accurately reflects, the claims that Ringsred was there prosecuting were the claims of the State of Minnesota. Ringsred made no showing of any personal property interest that he was vindicating, nor does he make such a showing here. All the relief ultimately granted, or denied by the State Court, as to the substance of the claims that Ringsred was there advancing, was for, or against, the State of Minnesota. See Minnesota Statutes Section 116B.03, Subdivision 1 ("Any person residing within the state * * * may maintain a civil action for **declaratory or equitable relief in the name of the State of Minnesota** * * *.").

Although Ringsred claimed incidental costs, and expenses, he made no claim for personal damages, as that form of monetary relief was not available to him under the statutory law of Minnesota upon which he relied, and his claim for costs, and attorneys' fees, was denied to him. Indeed, the Trial Court ruled, and the ruling was affirmed on appeal, that Ringsred's security deposit, arising from his success in obtaining temporary injunctive relief, would not be repaid to him in full, but would be disbursed, in part, to a developer of the project so enjoined; a developer who is not here a party. In effect, any property, or liberty interest held by Ringsred, in prosecuting that case, was of a type shared by every citizen of the State of Minnesota, in whose stead he litigated the case. As a consequence, if any property or liberty interest was impaired, it was the interest of the State of Minnesota which does not here join in the Plaintiffs' Section 1983 claim.[16]

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[16]We are mindful that Ringsred has captioned this proceeding as one in which he purports to represent the State of Minnesota. He does not identify the jurisdictional basis for him to do

(continued...)

The Plaintiffs' claimed denial of access to the Courts can fare no better, as the interests that Ringsred was pursuing in the State Courts were representational interests, and not those he had a right to litigate in his own stead. In this respect, we find our analysis closely guided, if not controlled, by the Court's holding in Curtin v. Federal Deposit Insurance Corporation ("FDIC"), 866 F.2d 255 (8th Cir. 1989). There, an attorney in private practice, who regularly represented banks in FDIC actions, challenged the enforceability of certain FDIC practices, in a public debate with an FDIC representative, who

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[16](...continued)
so, nor even the statutory basis for advancing those interests, and we are aware of none. This is not a putative class action, nor has there been any showing that Ringsred has standing to pursue monetary damage claims on behalf of a party whom Ringsred is not empowered to represent, since he is unlicenced to practice law. Nor can it sensibly be claimed that, here, the Plaintiffs are acting as private attorney generals, see Minnesota Statutes Section 8.31, Subdivisions 1 and 3, at least insofar as their Section 1983 claim is concerned. Lastly, even if the Plaintiffs could surmount these foreboding hurdles to Ringsred's current claims on behalf of the State of Minnesota, it is plain that a State is not entitled to protection under either the fourteenth amendment, or Section 1983. See Commonwealth of Pennsylvania v. Porter, 659 F.2d 306, 314 (3rd Cir. 1981) ("The Fourteenth amendment is a limitation upon the states in the interests of individuals, and section 1983 was enacted to facilitate vindication of such individual interests" and, therefore, "[t]he question is not whether either the fourteenth amendment or section 1983 protects the commonwealth neither does * * *."), cert. denied, 458 U.S. 1121 (1982); Barbara S. v. Obradovich, 937 F.Supp. 710, 723 (N.D. Ill. 1996); 'Z' Buda v. Saxbevich, 406 F.Supp. 399, 402 (E.D. Tenn. 1975) ("The state is not a '* * * citizen of the United States or other person within the jurisdiction thereof * * *' within the contemplation of 42 U.S.C. §1983 * * *."); cf., Delta Special School Dist. v. State Board of Education, 745 F.2d 532, 533 (8th Cir. 1984) ("A political subdivision of the state cannot invoke the protection of the fourteenth amendment against the state.")'; but cf., Santiago Collazo v. Franqui Acosta, 721 F.Supp. 385, 392 (D. P.R. 1989). Accordingly, even if authorized to do so, Ringsred would have no Section 1983 claim to prosecute on behalf of the Minnesota.

defended those policies. Id. at 256. Thereafter, portions of the speakers' respective comments were reported in a local newspaper. Id. The FDIC representative objected to the accuracy of the newspaper article, and transmitted a letter to the newspaper's editor, in which he referred to "distortions and inaccuracies" in the article. Id. The FDIC representative then contacted one of the attorney's clients, and cancelled a previously scheduled meeting concerning the policy at issue. Id.

In speaking with the attorney's client, the FDIC representative informed the client that he knew about the attorney's views on the challenged policy, and then went on to state:

> This office feels that it would be nonproductive to attempt to negotiate a stipulation and consent to the issuance of the proposed Order under these circumstances. Accordingly, we are hereby cancelling the previously arranged meeting and intend to go forth with the preparation of a Notice of Charges and hearing to put this necessary enforcement action in place.

Id. at 256.

The same type of letter was sent to two additional clients of the attorney. Id. In addition, another FDIC official refused the attorney's request to reschedule another meeting involving a different client. Id. at 257.

The attorney brought suit, contending that the FDIC's actions were in retaliation for her exercise of her First Amendment rights. Id. However, the FDIC moved to dismiss the claim based on a lack of standing, and a failure to state a

claim upon which relief could be granted. The District Court granted the Motion to Dismiss under Rule 12(b)(6), and the Court of Appeals affirmed. Id. In pertinent part, the Court stated:

> [The FDIC representative], like any official of the FDIC, clearly had the right to express his views about FDIC policy and about [the attorney's] position at the Des Moines meeting and in The Business Record. His exercise of his first amendment rights cannot be interpreted as retaliatory conduct.

Id. at 257.

More importantly, the Court went on to hold that the attorney did not have a cause of action for violation of her own right of access to the Court, as the actions were taken against her clients. As the Court explained:

> The cases cited by [the attorney] are inapposite, because in each case the government clearly acted to injure the plaintiff after the plaintiff exercised a constitutional right. * * * [The attorney's] clients, not [the attorney] were affected by the FDIC's refusal to negotiate at the prehearing meetings and by its refusal to reschedule a meeting. * * * [The attorney] has not even alleged that any of her clients have dismissed her or that she has been unable to acquire new clients.

Id. at 258.

The same is true here. If any property, or liberty interests were impaired by the Defendants' conduct, of which the Plaintiffs

now complain, they were those of the State of Minnesota, whose rights, and interests, Ringsred voluntarily elected to pursue on a representational basis. We can see no meaningful distinction between Ringsred's role in the State Court action, and the private attorney's role in Curtin. Nevertheless, even if we concluded that Ringsred's right of access to the Court were individually held by him, and was not merely representational, his Section 1983 claim, on that basis would fail, but on different grounds.

Indisputably, there is a constitutional right of access to the Courts. In this Circuit, that right of access is viewed as a component of the First Amendment right to petition the government for redress of grievances. See, Harrison v. Springdale Water & Sewer Commission, 780 F.2d 1422, 1426 (8th Cir. 1986); see also, Valot v. Southeast Local Sch. Dist. Bd. of Edu., 107 F.3d 1220, 1226 (6th Cir. 1997) ("In our judgment, Plaintiffs' claim is best viewed as a claim under the Petition Clause, for that provision expressly protects conduct most like the conduct for which Plaintiffs seek protection from retaliation."). As our Court of Appeals has explained:

> An individual's constitutional right of access to the courts "cannot be impaired, either directly * * * or indirectly, by threatening or harassing an [individual] in retaliation for filing lawsuits. It is not necessary that the [individual] succumb entirely or even partially to the threat as long as the threat or retaliatory act was intended to limit the [individual's] right of access." Sanders [v. St. Louis County], 724 F.2d [665, 666 (8th Cir. 1983)]. The cases from this Circuit, as well as from others, make clear that state officials may not take retaliatory action against an individual designed either to

> punish him for having exercised his constitutional right to seek judicial relief or to intimidate or chill his exercise of that right in the future. See, e.g., id.; Garland [v. Polley], 594 F.2d [1220, 1223 (8th Cir. 1979)]; Hall v. Sutton, 755 F.2d 786, 787 (11th Cir. 1985); Matzker v. Herr, 748 F.2d 1142, 1150-51 (7th Cir. 1984) ("An act taken in retaliation for the exercise of a constitutionally protected right is actionable under §1983 even if the act, when taken for a different reason, would have been proper.") Lamar v. Steel, 693 F.2d 559, 562 (5th Cir. 1982), cert. denied, 464, 464 U.S. 821, 104 S.Ct. 86, 78 L.Ed. 2d 95 (1983); Milhouse v. Carlson, 652 F.2d 371, 374 (3d Cir. 1981); Silver v. Cormier, 529 F.2d 161, 163 (10th Cir. 1976). An individual is entitled to "free and unhampered access to the courts." United States ex rel. Cleggett v. Pate, 229 F. Supp. 818, 821-22 (N.D. Ill. 1964).

Harrison v. Springdale Water & Sewer Commission, supra at 1427-28. By way of an example, in Harrison, the Court determined that the plaintiffs' Complaint stated a cognizable cause of action, based on a denial of access to the Courts, where the Complaint alleged that, in a suit by the plaintiffs against State actors, the State actors admitted to prosecuting a factually unsupported counterclaim against the plaintiffs solely as a tactical means to pressure them into settling their case. Id. at 1428. Other cases have held that actions, such as deliberate delay, constitute a deprivation of the right of access to the Court. See, Whisman v. Rinehard, 119 F.3d 1303, 1311 (8th Cir. 1997) Ryland v. Shapiro, 708 F.2d 967, 974 (5th Cir. 1983).

Here, Ringsred claims that his right of access to the Court was impaired through the preemptive demolition of the Strand Theater; the preemptive demolition of the three buildings in December of 1998, which was asserted to be in contravention of a mandatory injunction issued by the State Court; the meetings with, and intimidation of, the witnesses who were to appear, and did appear, on behalf of Ringsred at the Trial; the "substantial advertising" to promote the "Soft Center" project; and the allegation, in January of 2000, that Ringsred was conducting "frivolous litigation," with attendant threats of seeking sanctions therefore. These contentions are readily distinguishable from those presented in Harrison, a case on which the Plaintiffs heavily rely. Here, we are presented with no admission, by any Defendant, that any act in defending against the claims Ringsred was raising in State Court was retaliatory, or was undertaken for any other unlawful or dilatory purpose.

Instead of the soberingly culpable admission at play in Harrison, here Ringsred raises a series of objections which, with regularity, litter civil litigation. Founded on our judicial system's reverence for advocacy, litigants routinely consider the efforts of an opponent to serve improper, ulterior ends. Efforts at discovery, at Motion practice, and in all other aspects of the pretrial process, can be viewed, in the fiercely partisan eyes of the advocate, as an attempt to discourage continued litigation, or to force a settlement. In our experience, such claims, without more, have never proceeded beyond the filing of a Motion for Sanctions under Rule 11, or 37, Federal Rules of Civil Procedure. If now, as urged by the Plaintiffs, such complaints, without more, are viable grounds for successive Section 1983 claims, the prospect that the Courts will do little more than monitor sequential suits, between the same litigants, is unnerving.

We do not distinguish Harrison solely on that ground, however, for we recognize that the Ringsred raises more substantive claims which accuse the Defendants of acts which overshadow his objection to what he regards as the Defendants' vexing State Trial conduct. In no small part, the Plaintiffs predicate Ringsred's denial of access claim upon the "preemptive" demolition of the Strand Theater and three other buildings. The preemptive nature of the demolitions, the Plaintiffs urge, denied them an effective legal forum in which to preserve the status quo, for the acts of demolition were already in progress.[17] Notably, however, the State District Court heard these contentions, and was unmoved to order the suitable relief that Ringsred then sought. We have no basis to conclude, as the Plaintiffs imply, that the State Court was powerless to act if, in fact, the Court determined that its integrity was being impugned either by the partial razing of the Strand Theater in August of 1998, or by the subsequent destruction of three buildings in December of that same year. The State Court had a full panoply of equitable means to forestall, indefinitely, any further demolition, and to require a faithful, though probably less than perfect restoration, if that Court had been persuaded that such measures were warranted.

Unlike the circumstances in Harrison, and the other decisions that have been drawn to our attention, here the Plaintiffs do not simply wish to enforce the determinations of

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[17]We reiterate that, in his representative capacity, Ringsred's claimed constitutional deprivations were the same as every other citizen of the State of Minnesota. Having sued to enforce Minnesota's interest, without reference to any individual interest in his own right, and without any legal right, under the statutory law upon which he relied, Ringsred's subsequent Section 1983 claim could be replicated by every citizen of this State who should wish to vindicate the same rights as Ringsred, thereby exposing, if the Plaintiffs are correct, the City to a staggeringly monumental damages claim for acts which, ultimately, were determined not to be unlawful.

the underlying State Court Judgment; rather, they seek to relitigate, in effect, the very State Court processes which, ultimately, denied Ringsred the whole relief that he sought, both at Trial, and on appeal. In Harrison, the offending Counterclaim of the State actors was dismissed as without merit in the underlying State Court action. Accordingly, in allowing the plaintiffs, there, to proceed with a Section 1983 claim in Federal Court, predicated upon the State actors' admission that the Counterclaim was a strategic ploy to pressure a settlement, no collateral attack on the State Court processes was presented to the Federal Courts. Here, however, the Plaintiffs attack the State Court processes as having produced the wrong result, or at least as having been misdirected by the Defendants improper pre-Trial, Trial, and post-Trial conduct. As a consequence, the Court, in Harrison, was not obligated to undertake the analysis to which we now turn.

The Rooker-Feldman doctrine presents a subject matter jurisdictional bar to general constitutional challenges brought in Federal Court, when the constitutional challenges are essentially appeals from a State Court Judgment, or are inextricably intertwined with claims prosecuted in State Court. See, District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416 (1923); Lemonds v. St. Louis County, 222 F.3d 488, 492-93 (8th Cir. 2000) ("The Rooker-Feldman doctrine forecloses not only straightforward appeals but also more indirect attempts by federal plaintiffs to undermine state court decisions."), cert. denied sub nom., Halbman v. St. Louis County, - - - U.S. - - -, 121 S.Ct. 1168 (2001); Charchenko v. City of Stillwater, 47 F.3d 981, 983 (8th Cir. 1995). In other words, when a case seeks a review of a State Court Judgment, or is inextricably intertwined with the State Court Judgment, the Federal Courts, with the exception of United States

Supreme Court, lack subject matter jurisdiction to decide the matter. See Lemonds v. St. Louis County, supra.

As our Court of Appeals explained in Lemonds, "[a] general federal claim is inextricably intertwined with a state court judgment 'if the federal claim succeeds only to the extent that the state court wrongly decided the issue before it.'" Id. at 493. "Where a litigant attempts to circumvent the requirement of seeking direct review in the United States Supreme Court by casting [his] lawsuit as a section 1983 action, Feldman's jurisdictional bar applies." Keene Corp. v. Case, 908 F.2d 293, 297 (8th Cir. 1990), citing Worldwide Church of God v. McNair, 805 F.2d 888, 893 n.4 (8th Cir. 1986), Curry v. Baker, 802 F.2d 888, 893 n.4 (9th Cir. 1986), and Hale v. Harney, 786 F.2d 688, 690-91 (5th Cir. 1986). The State and Federal claims need not be identical, however, for the doctrine to apply. See, Lemonds v. St. Louis County, supra at 493, citing In re Goetzman, 91 F.3d 1173, 1177 (8th Cir. 1996).

Here, in practical effect, Ringsred is requesting that we overturn the State Court's decision which lifted the Temporary Restraining Order that had been previously imposed with respect to the Strand Theater, as well as the Court's finding that the State Court defendants had not violated that Court's mandatory injunction of October 5, 1998, in razing the three buildings in the following December of that year. In particular, the State Court determined, when Ringsred attempted to secure a Temporary Restraining Order to prevent the demolition of the three additional buildings, that he had not presented any evidence that a Temporary Restraining Order was necessary, as Ringsred had not shown that the destruction of the buildings fell within the ambit of the Court's Order. See, State of Minnesota, by Ringsred v. City of Duluth, C3-98-601186, Order, at 3 (Minn. Dist. Ct. December 28, 1998). Accordingly, the State District Court denied Ringsred's request for equitable relief, and the Minnesota Court of Appeals

specifically noted, in its related ruling, that "Ringsred has made no showing that respondents have violated the law or the trial court's mandate." State of Minnesota, by Ringsred v. City of Duluth, 1999 WL 618613 (Minn. App. August 17, 1999) [publication page references not available].

In effect, in the State Court litigation, Ringsred won a battle, but lost the war - - he secured the historical designation he sought, but was unsuccessful in pressing his contention that the Defendants, or at least certain of them, should not be allowed to raze buildings within that designated area, without the environmental preconditions he felt appropriate. The State Court's Judgment, which rejected Ringsred claims, would be a fragile resolution of the hotly disputed contentions there raised if, notwithstanding its entry, as well as its affirmance on appeal, its practical effect could be eviscerated by raising the same claims, as were presented to the State Court - - or as they could have been presented - - so as to be relitiaged, in its repackaging, as a Section 1983 action. As the Court reiterated, in Lemonds, "federal plaintiffs cannot by artful pleading obtain a hearing of disguised state court appeals that would otherwise be subject to a Rooker-Feldman bar." Lemonds v. St. Louis County, supra at 494.

The intertwining of Ringsred's current claims, and those he advanced in the State Court proceedings, cannot be seriously contested. If, as Ringsred continues to allege, the Defendants have violated the terms of a State Court Judgment, we can see no reason to allow Ringsred to ignore that Judgment, with impunity, and proceed with the same claims in a Section 1983 vehicle in Federal Court, in order that he may seek monetary damages, in substantial sums, which were unavailable to Ringsred in the State Court, for conduct that the State Courts found to be compliant with the State Court's Injunction, and with the governing law. While Ringsred may well be disappointed in the rulings of the Minnesota Courts,

we do not sit as a Court of Appeals on State Court matters. Ringsred had full access to the State Court, and he exhausted his avenues for relief, from the State Court's Judgment, to the extent that he then felt was warranted. To allow litigants to engage in a successive Section 1983 claim, based on no more than their disagreement with an underlying State Court ruling, would effectively disembowel the Rooker-Feldman doctrine.

As further proof of the inextricably entwining of the Plaintiffs' current Federal claims, with those resolved by the State Court, we need only note that each of the protests as to the Government Defendants' conduct with Fisher; with Aubut; with the preemptive razing of the Strand Theater, and of other buildings in December of 1998; with the dissemination of prejudicial pretrial publicity; with misrepresentations of fact; with violations of the Minnesota's bidding and contract laws; and with unprofessional conduct by the City's attorneys, and governmental agents; were expressly proffered to the State District Court, in December of 1999, in conjunction with Ringsred's request that the Court find the Government Defendants in Contempt of Court so as to be appropriately sanctioned. The State District Court rejected Ringsred's contentions, and denied the Motion to Show Cause why the Government Defendants should not be cited for contempt, or otherwise sanctioned.

We understand Ringsred to characterize the State Court's decision as, in effect, a deferral of any ruling. We disagree. The State District Court did not strike the Motions, or dismiss them as outside of the Court's subject-matter jurisdiction. Rather, the Court denied the Motions, explaining that many were ill-founded on incompetent or insufficient evidence, or were better suited to a disposition in criminal, or in professional disciplinary proceedings. Given the deference we extend to the rulings of a State Court, on matters within that Court's plenary jurisdiction, we express no view on the

propriety of the State Court's resolution of Ringsred's post-Trial Motions, other than to note that, if Ringsred were disappointed in those rulings, or otherwise found them to be in error, his recourse was to ask the Court to reconsider, or to file an appeal in the Minnesota Appellate Courts.[18] Ringsred did neither. "Although couched in the language of the federal statute, [Ringsred's] claims are simply a redux of [his] state claims." Alvarado v. City of Granite Falls, 2001 WL 397891 at *2 (D. Minn., March 23, 2001). Lest there be other doubt about the extent to which the Plaintiffs' Federal claims are inextricably intertwined with Ringsred's State Court claims, we need only note that, as part of their requested relief, the Plaintiffs ask this Court to command future compliance with the Mandatory Injunction issued by the State Court. To do so, of course, necessarily entangles this Court in matters best left to the State Court, but as to which the State Court denied Ringsred his requested relief.

In our system of federalism, Rooker-Feldman serves a fundamental constitutional purpose. If allowed to proceed as a Section 1983 claim, the Plaintiffs' action would, ineluctably, be self-propagating, and would foster further inter-Court collateral attacks, as a prior cause of action is shrouded in

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[18]We recognize that the State District Court expressly stated, as part of its Order:

> In reviewing plaintiff's allegations the Court does not mean to suggest it has determined any of them to be valid or invalid. The Court recognizes they are claims being asserted by plaintiff and the Court has been required to respond to them in terms of assessing their current procedural posture before the Court. That is all the court has done.

If Ringsred felt that the State District Court should have done more, or otherwise abandoned its obligation to fairly resolve his claims, his redress was in the State Courts, and not in this Court.

constitutional garb so as to seek relief in one Court that was denied in another. We share no secrets in observing that the relations between these litigants are strained, and acrimonious, at their very best. If, as the Plaintiffs urge, a party's deployment of a Rule 11 Sanction,[19] or the mere threat of one, were a sufficient predicate a denial for access claim, then the Government Defendant's filing of such a request, in this action, under Section 1983, in some future State or Federal Court, if, as here, that claim is denied. Indeed, the Plaintiffs urge that

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[19]Only one of the Plaintiffs' claims might be of a type to escape the application of the Rooker-Feldman doctrine. We are unable discern, based on the Plaintiffs' Complaint, whether Ringsred's assertion, that he was threatened with Rule 11 Sanctions, in January of 2000, related to his earlier State Court claim, or some other litigation, that he later commenced, inclusive of this one. We find, however, that it makes no difference.

The Minnesota Legislature, as well as the Minnesota Supreme Court, have viewed frivolous litigation with such alarm, as to cause the enactment of a statute, and the promulgation of a Rule, which commends a sober appraisal of the good faith pursuit of claim and defenses in the Minnesota Courts. See, Minnesota Statutes Section 549.211, and Rule 11, Minnesota Rules of Civil Procedure. Were the mere invocation of those statutory, or regulatory measures, sufficient to expose the party, who should provide the notice of potential sanctions to a successive Section 1983 claim, then the vexatiousness, which was sought to be minimized, if not eradicated, by the palliative measures, would soon be its undoing. Commencing litigation is a serious act, as is the mounting of a defense to litigation commenced by another. Sanctions under Rule 11 are not self-effectuating - - the Rule requires a period of notice and cure, before sanctions may be imposed, and proven to be warranted. Such a procedure can have no conceivable chilling effect, other than to remove frivolous disputes from the Court's docket. Accordingly, we find, as a matter of law, that the invocation of a threat of Rule 11 sanctions, whether privately, or publicly, could deny Ringsred access to the Court. Moreover, the ultimate sanction, arising from such a threat, may well be to the party uttering the threat, if that party is not successful, see Rule 11(a)(1), Minnesota Rules of Civil Procedure, and such matters are best left to the Court in which the action pends.

most any pretrial dispute can be reasserted, as a denial of access claim, if the dispute can be construed as some form of dissuasion in pursuing a law suit. The potentiality for an unending continuum of litigation should be obvious, as one successive Section 1983 claim begets another, and so on, and so on, and so on.

In sum, on the Record presented, we find no denial of due process, procedural or substantive, nor any denial of access to the Courts, and therefore, we recommend that the Plaintiffs' cause of action be dismissed, on jurisdictional grounds, as we are without the requisite subject matter jurisdiction to entertain the Plaintiffs' Section 1983 claims.[20]

b. The Plaintiffs' Second and Third Causes of Action.

The Second and Third Causes of Action are brought, by Ringsred, on behalf of the State of Minnesota under the guise of rights afforded under MERA, or are brought on behalf of Federal, State and local taxpayers. Ringsred contends that the Defendants intentionally and negligently violated various, unspecified laws and statutes, including unprofessional conduct by attorneys, misconduct by public officials, coercion, witness tampering, abuse of competitive bidding for public projects, obstruction of justice, contempt of Court, abuse of legal process, and deceit-collusion-misconduct by attorneys, perjury, conspiracy to commit crimes, as well as a failure to report misuse of public funds. See, Complaint, at ¶¶13-15, 18=19. He also contends that the Defendants have unlawfully recruited local businesses for the Soft

[20]Given our recommendation, we need not, and do not, address the Government Defendants' Motion for Summary Judgment on qualified immunity grounds.

Center/Technology project, thereby injuring Federal, State and local taxpayers, including Duluth businesses. Notwithstanding these bald allegations, Ringsred has failed to demonstrate that he has personally suffered any particularized injury, and he lacks the standing to assert these claims on behalf of the State of Minnesota, or Federal, State and local taxpayers.

Article III of the United States Constitution restricts Federal Courts to the adjudication of actual "cases" and "controversies." The principle of "standing" is among several doctrines - - such as mootness, ripeness, and the involvement of a political question - - which have developed to inform and define the "cause or controversy" requirement. See Allen v. Wright, 468 U.S. 737, 750 (1984); Warth v. Seldin, 422 U.S. 490, 498 (1975); Ben Oehrleins and Sons and Daughter, Inc. v. Hennepin County, 115 F.3d 1372, 1378 (8th Cir. 1998) ("Standing is the constitutional requirement, imposed by the 'cases or controversies' provision of Article III, that a plaintiff must allege a judicially cognizable and redressable injury in order to pursue a lawsuit."); Neighborhood Transp. Network, Inc. v. Pena, 42 F.3d 1169, 1172 (8th Cir. 1994) ("Federal courts are courts of limited jurisdiction and can only hear actual 'cases or controversies' as defined under Article III of the Constitution."). "As an aspect of justiciability, the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth v. Seldin, supra at 498-99, quoting Baker v. Carr, 369 U.S. 186, 204 (1982).

It is a plaintiff's duty to show the "minimal constitutional requirements" necessary for standing. Ben Oehrleins and Sons and Daughter, Inc. v. Hennepin County, supra at 1378. Those elements include:

> [A]n "injury in fact" that is both (a) concrete and particularized, and (b) actual or imminent, rather than conjectural or hypothetical; (2) a casual connection between the alleged injury and the defendant's conduct; that is, that the injury is "fairly traceable" to the challenged action; and (3) that it is likely that a favorable decision will redress the injury.

Id. citing Lujan v. Defendants of Wildlife, 504 U.S. 555, 559-60 (1992).

In sum, "[a] federal court's jurisdiction * * * can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from putatively illegal action * * *.'" Warth v. Seldin, supra at 499, quoting Linda R.S. v. Richard D., 410 U.S. 614, 617 (1973).

Moreover, even if a plaintiff can satisfy these requirements, the Courts have imposed further "prudential limits" on the Court's exercise of jurisdiction. See, Ben Oehrleins and Sons and Daughter, Inc. v. Hennepin County, supra at 1378 ("these prudential limits are judicially imposed and 'are "founded in concern about the proper - - and properly limited - - role of the courts in a democratic society."'"), citing Bennett v. Spear, 520 U.S. 154 (1997). There are three particular "prudential limits" which, we conclude, apply to this case. The first is that the Court should not exercise subject matter jurisdiction "when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens." Warth v. Seldin, supra at 499, and cases cited therein. A second "prudential limit" dictates that only in exceptional circumstances may a party assert the rights of another. Id.; Ben Oehrleins and Sons and Daughter, Inc. v. Hennepin County, supra at 1378. "This 'third-party standing' rule thus 'normally bars litigants from asserting the rights or

legal interests of others in order to obtain relief from injury to themselves.'" Id. at 1379. Finally, a third "prudential limit" restricts jurisdiction to instances in which a plaintiff, who alleges a constitutional or statutory violation, can show that he is within the "zone of interests," of the particular protection he attempts to assert. See, Bennett v. Spear, supra at 162. "To satisfy this prudential requirement, a plaintiff must show that 'the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" Ben Oehrleins and Sons and Daughter, Inc. v. Hennepin County, supra at 1379, citing Association of Data Processing Serv. Orgs. v. Camp, 397 U.S. 150, 153 (1970).

Given these principles, it is clear that Ringsred has no standing to assert claims, based on violations of the generalized laws that he broadly references, or of the restraint of trade laws, assertedly on behalf of the State of Minnesota, or Federal, State and local taxpayers. Moreover, he has failed to allege any particularized injuries that he claims to have personally suffered as a result of the alleged violations of these laws.

First, as for the claims that he is asserting on behalf of the State of Minnesota, Ringsred appears to rely upon MERA as the vehicle for his cause of action. While, as Ringsred well knows from his past State Court claims, MERA does allow an individual to prosecute an action on behalf of the State of Minnesota, that action can only br brought "for the protection of the air, water, land, or other natural resources located within the state," and only for declaratory or equitable relief. See, Minnesota Statutes Section 116B.03. In contrast, Ringsred seeks to use the statute to secure Federal Court jurisdiction for claimed violated of other laws, and of other rights. Although largely unspecified, those claimed violations do not further, in any direct way, the "protection of the air, water, land, or other

natural resources," and therefore MERA clearly does not vest Ringsred with a viable cause of action for any such violations.

Moreover, Ringsred has done no more than allege "'generalized grievances' shared in substantially equal measure by all or a large class of citizens." Warth v. Seldin, supra at 499, and cases cited therein. He has failed to identify any instance in which, he, himself, has suffered a particularized injury on account of the Defendants, given the fact that his underlying State Court suit, during which most of his claims arose, was brought not on his own behalf, but in a representative capacity, on behalf of the State of Minnesota. He neither alleges, nor proves, that he had any direct ownership, or other property interest in any of the buildings which were demolished, and he flatly admits that he has not lost any business due to what he describes as the Defendants "unlawful recruitment of local businesses." See, Deposition of Eric Ringsred, at 77–79. Accordingly, we find that Ringsred has no standing to assert claims on behalf of either of himself, or the State of Minnesota, for his alleged violations of various statutes, and for a claimed restraint of trade.[21]

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[21] Ringsred does allege that the Defendants' unlawful recruitment of business has injured his real estate rental business. See, Complaint, at ¶20. In particular, he maintains that their acts violated Title 15 U.S.C. §1 ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states * * *, or with foreign nations, is hereby declared to be illegal"), as well as Minnesota Statutes Section 325D.01 ("A contract, combination, or conspiracy between two or more persons in unreasonable restraint of trade or commerce is unlawful"). As for the claimed violation of Title 15 U.S.C. §1, the Plaintiffs have not even asserted that the restraint of trade has affected interstate commerce, but merely alleges that the Defendants unlawfully recruited "local businesses." Complaint, at 21. Moreover, Ringsred has not demonstrated that the assertedly unlawful restraint personally damaged him in any fashion. Specifically, when asked during his deposition

(continued...)

Lastly, Ringsred attempts to assert claims as a Federal, State and local taxpayer. However, the Supreme Court has clearly determined that taxpayers do not have standing to sue public officials, or to be awarded compensatory damages, for governmental actions with which they disagree. As the Court has explained, "the expenditure of public funds in an allegedly unconstitutional manner is not an injury sufficient to confer standing even though the plaintiff contributes to the public offers as a taxpayer." Valley Forge Christian College v. Americans United, 454 U.S. 464, 477 (1982). Further, the Court, in Flast v. Cohen, 392 U.S. 83, 102 (1986), limited constitutional challenges, which are based upon taxpayer standing, to those claims that challenge a congressional enactment which exceeds specific constitutional limitations upon the exercise of the taxing and spending power - - plainly not the case here. Therefore, the Plaintiffs have no standing to bring their Second and Third causes of action, and they should be dismissed for want of subject matter jurisdiction.

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[21](...continued)
whether he has been damaged by the allegedly unlawful recruitment, Ringsred responded that he had only been injured to the extent that one of his tenants had lost a sublessee, which did not result in any loss of rentals to him. See, Deposition of Eric Ringsred, at 77-79

Thus, notwithstanding his urging, that his own real estate rental business has suffered from the alleged unlawful recruitment, Ringsred has failed to show any particularized injury to his own interests, but only to that of a sublessee. Lest there be doubt to the contrary, the issue of standing is jurisdictional, as to which the court is empowered, under Rule 12(b)(1), Federal Rules of Civil Procedure, to consider matters outside of the pleadings. See, Deuser v. Vecera, 139 F.3d 1190, 1191 n.3 (8th Cir. 1998), quoting Drevlow v. Lutheran Church, Mo. Synod, 991 F.2d 468, 470 (8th Cir. 1993).

c. The Plaintiffs' Fourth Cause of Action.

In their Fourth Cause of Action, the Plaintiffs contend that the Defendants have damaged Ringsred's reputation, through assertedly false, public allegations of "frivolous litigation," and with threats of sanctions for such "frivolous" suits so as to deprive him of his right to procedural due process under the Fourteenth Amendment. Ringsred may also be claiming defamation under Minnesota law, although that remains unclear.[22]

The United States Constitution does not protect against mere defamation. An interest in reputation, alone, is not a "liberty," or "property" interest that is protected by the Fourteenth Amendment. See, Siegert v. Gilley, 500 U.S. 226, 233-34 (1991); Paul v. Davis, 424 U.S. 693, 712 (1976); Rappa v. Hollins, 991 F. Supp. 367, 372 (D. Del. 1997) ("[R]eputation is not a property interest protected by the Due Process Clause"). Rather, to be actionable, the defamation or injury to an interest in reputation must additionally cause the loss of some other right. See, Paul v. Davis, supra at 711. As we have already explained, however, Ringsred has not alleged any viable cause of action for his claimed denial of access to the Courts, or any other constitutional claim, and, therefore, his claim for a loss of reputation, being unaccompanied by the loss of some other right, should be dismissed.

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[22]Both this claim, and the entirety of the Plaintiffs' Fifth cause of action, to the extent that they rely on the laws of the State of Minnesota - - and the Fifth cause of action has no other basis - - should be dismissed without prejudice. Neither claim has been pled with specificity, and we see no reason to exercise over Supplemental Jurisdiction in order to address what are singularly actions under State law. See, Title 28 U.S.C. §11367(a).

B. The Remaining Motions for Summary Judgment.

The Chamber Defendants, and the Soft Center Defendants, have each moved for Summary Judgment and, as best as we can discern, the only cogent cause of action pled against them arises under Section 1983, and charges them with complicity, with the Government Defendants, in denying Ringsred access to the Court in the context of his previous State Court litigation. Within this Circuit, the fact that the Chamber, and Soft Center Defendants were not parties to the State Court action does not impact upon the applicability of the Rooker-Feldman doctrine. See, Lemonds v. St. Louis County, supra at 495; Leino v. Nelson, 2001 WL 1141817 at *2 n.5 (D. Minn., August 23, 2001). Accordingly, these Defendants should also be dismissed for want of subject matter jurisdiction over the claims the Plaintiffs have asserted against them, and their Motions for Summary Judgment, to that effect, should be granted.

C. The Government Defendants' Motion for Rule 11 Sanctions.

The Government Defendants seek Rule 11 Sanctions against the Plaintiffs, arguing that Ringsred's[23] second Motion to Amend the Complaint was solely for purpose of delay and harassment, especially in light of the Court's prior admonitions following our denial of his first attempt to amend his

[23]Deborah Ringsred did not join in the last Motion to Amend the Complaint.

Complaint.[24] Moreover, the Government Defendants contend that Ringsred knowingly asserted factual allegations which he knew to be untrue, and they seek $500.00 for each of the affected Defendants, and $1,000.00 in attorney's fees, as well as an Order prohibiting Ringsred from asserting any further Motions to Amend Complaint.

In relevant part, Rule 11 provides as follows:

> (b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances - -
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause

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[24]The Government Defendants highlight the following observation in our prior Order of March 14, 2001:

> With no apparent exception, the factual allegations, which they now propose to add to their pleadings, were known to the Plaintiffs for months, if not years, before this action was commenced. In short, the Plaintiffs offer no newly discovered facts as necessitating an Amended Complaint; proverbially, they seek to "pour old wine into a new bottle." Many of the newly proposed factual assertions arose from State Court proceedings, either completed or in progress, which appear to have produced results which were not fully to the Plaintiffs' liking. We find no purpose in allowing the amendment now belatedly sought, other then to foster the Plaintiffs' apparent interest in protraction and delay.

See, Ringsred v. City of Duluth, Civ. No. 00-2241, Order (D. Minn. March 14, 2001).

> unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law * * *.

Rule 11, Federal Rules of Civil Procedure.
In addition, Rule 11 requires that every Motion, which is filed in Federal Court, be signed by the party, or an attorney of Record.
Id.

According to the Supreme Court, "the central purpose of Rule 11 is to deter baseless filings in district court." Simitar Entertainment, Inc. v. Silva Entertainment, Inc., 44 F. Supp. 2d 986, 991 (D. Minn. 1999), quoting Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990). As such, under Rule 11(c) "[i]f, after notice and a reasonable opportunity to respond, the court may * * * impose an appropriate sanction upon the attorney, law firms, or parties that have violated subdivision (b) or are responsible for the violation." Monson Trucking, Inc. v. International Broth. of Teamsters, Local 346, 2000 WL 119637 at *8 (D. Minn. 1999). In determining whether sanctions are warranted, the Court must use an objective standard of reasonableness, and must consider factors such as the wrongdoer's history, the severity of the violation, and the degree to which malice or bad faith contributed to the violation. See, Business Guides v. Chromatic Communications Enters., Inc., 498 U.S. 533 (1991); Pope v. Federal Express Corp. 49 F.3d 1327, 1328 (8th Cir. 1995).

We recognize that Ringsred's second Motion to Amend the Complaint, like his first, did not contain any newly discovered allegations, but we are not persuaded that the purpose of the Motion was to harass the Defendants, or to delay these proceedings. We do not presume bad faith. Rather, we are satisfied that, when Ringsred was caused to respond to the Defendants' dispositive Motions, he ran abruptly into the wall of vagueness presented by the allegations of the Plaintiffs' original Complaint. Although the Plaintiffs' proposed first Amended Complaint sought to instill some clarity to the Plaintiffs claims, the Complaint also sought to vastly expand the number of claims asserted, and many of the claims were found, upon analysis, to be futile. The Plaintiffs' second attempt at amendment, which was a response to the Government Defendants' Motion to Dismiss, that accused the Plaintiffs of obscurity in the pleading of their claims, was explained, by Ringsred, as a sincere effort to crystallize the claims the Plaintiffs had earlier raised. We take Ringsred at his word, although we view the claims in the second proposed amendment to be more expansive than those originally alleged. While misguided, and untimely, we do not regard the second attempt at amending the Plaintiffs' Complaint as worthy of Rule 11 Sanctions.

Nor do we find any palpably false allegations in the second proposed amendment. The Government Defendants have identified six assertions in which, they believe, Ringsred has been less than candid. See, Government Defendants' Memorandum Supporting Motion for Rule 11 Sanction, at 8-10. Without derogating the accuracy and sincerity which should attach to the pleadings of claims, the instances of inaccuracy, which are cited by the Government Defendants bespeak of semantics, and not of untruths. Not surprisingly, the Government Defendants are unpersuaded by the merits of the Plaintiffs' proposed claims and allegations and, it appears

to us, this adversarial perspective has colored their view of Ringsred's motives. While Ringsred's allegations may not prove to be accurate, were they to be submitted for adjudication, they appear to accurately state his impression as to past events, and circumstances. In short, we have reviewed our fair share of meritorious Motions for Rule 11 Sanctions and, thankfully for all concerned, this is not one of them. Consequently, we deny all Government Defendants' Motion for Rule 11 Sanctions.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 02-1242

Eric Ringsred, an individual, and a state, federal and local taxpayer; State of Minnesota by Eric Ringsred; Deborah Ringsred, an individual.

Appellants,

vs. **ORDER**

City of Duluth, et al.,

Defendants

Before the Court are Plaintiffs' Objections to the Order October 22, 2001 Report and Recommendation (R&R) of Magistrate Judge Raymond L. Erickson.

This Court has conducted the required de novo review of the objected to portions of the R&R and is satisfied that Judge Erickson's recommended disposition is fully supported by the record before him and by controlling legal precedent. The R&R is thorough and the legal analysis sound.

Upon all the files, records and proceedings herein, **IT IS ORDERED:**

1. The Objections (Doc. No. 121) are **OVERRULED**;
2. The Report and Recommendation (Doc. No. 118) is **ADOPTED;**

3. The Motion of the Government Defendants[25] to Dismiss the Plaintiffs' Complaint for lack of subject matter jurisdiction (Doc. No. 48) is **GRANTED**;

4. The Motion of the Soft Center Defendants[26] for Summary Judgment (Doc. No. 83) is **GRANTED**;

5. The Motion of the Chamber Defendants[27] for Summary Judgment (Doc. No. 94) is **GRANTED**;

6. The Complaint is **DISMISSED WITH PREJUDICE.**

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 26, 2001

/s/
RICHARD H. KYLE
United States District Judge

---

[25]City of Duluth, Gary Doty, Cynthia Albright, Bryan Brown, Robert Asleson, John Schweiger, John Smedberg, and Duluth Economic Development Authority.

[26]Center-Duluth, Inc. and Michael McNamara.

[27]Duluth Area Chamber of Commerce, Team Duluth, David Ross and Michael McNamara.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 02-1242

Eric Ringsred, an individual, and a state, federal and local taxpayer; State of Minnesota by Eric Ringsred; Deborah Ringsred, an individual.

Appellants,

v.

Appeal from the United States District Court for the District of Minnesota.

City of Duluth, a municipal corporation, and the following City officials individually and in their official capacities; Gary L. Doty, Mayor; Cynthia Albright, Assistant City Attorney; Brian Brown, City Attorney; Robert Asleson, Assistant City Attorney; John Schweiger, Special Projects Manager; John Smedberg, Assistant City Attorney; Duluth Economic Development Authority; Cynthia Albright, individually and in her official capacity as Director of the Duluth Economic Development Authority; Team Duluth; Soft Center-Duluth, Inc.; Michael McNamara; Duluth Area Chamber of Commerce; David Ross, CEO of the Duluth Area Chamber of Commerce,

Appellees.

[UNPUBLISHED]

Submitted: June 24, 2002
Filed: June 27, 2002

Before LOKEN, BEAM, and RILEY, Circuit Judges.

PER CURIAM.

Eric and Deborah Ringsred appeal the district court's[28] dismissal of their lawsuit- -purportedly brought on behalf of the State of Minnesota as well as themselves- -against the City of Duluth and its mayor, various City agencies and employees, Soft Center-Duluth, Inc. and its director, and the Duluth Area Chamber of Commerce and related individuals and entities.

After carefully reviewing the record, we affirm the dismissal of the federal claims with prejudice and the dismissal of any state claims without prejudice. See 8th Cir. R.47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

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[28]The Honorable Richard H. Kyle, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Raymond L. Erickson, United States Magistrate Judge for the District of Minnesota.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
No. 02-1242
Civ. No. 00-2241 (RHK/RLE)

Eric Ringsred, an individual, and a state, federal and local taxpayer; State of Minnesota by Eric Ringsred; Deborah Ringsred, an individual.

Appellants,

v.

Appeal from the United States District Court for the District of Minnesota

City of Duluth, a municipal of Minnesota. corporation, and the following City officials individually and in their official capacities; Gary L. Doty, Mayor; Cynthia Albright, Assistant City Attorney; Brian Brown, City Attorney; Robert Asleson, Assistant City Attorney; John Schweiger, Special Projects Manager; John Smedberg, Assistant City Attorney; DuluthEconomic Development Authority; Cynthia Albright, individually and in her official capacity as Director of the Duluth Economic Development Authority; Team Duluth; Soft Center-Duluth, Inc.; Michael McNamara; Duluth Area Chamber of Commerce; David Ross, CEO of the Duluth Area Chamber of Commerce,

Appellees.

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.
(5172-010199)

June 27, 2002

A true copy.

ATTEST: /s/
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

[Document Taken Off Internet Minnesota Statutes 2001]
Minnesota Statutes 2001, Chapter 116B.

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116B.01 Purpose.

The legislature finds and declares that each person is entitled by right to the protection, preservation, and enhancement of air, water, land, and other natural resources located within the state and that each person has the responsibility to contribute to the protection, preservation, and enhancement thereof. The legislature further declares its policy to create and maintain within the state conditions under which human beings and nature can exist in productive harmony in order that present and future generations may enjoy clean air and water, productive land, and other natural resources with which this state has been endowed. Accordingly, it is in the public interest to provide an adequate civil remedy to protect air, water, land and other natural resources located within the state from pollution, impairment, or destruction.

HIST: 1971 c 952 s 1; 1986 c 444

=116B.02

116B.02 Definitions.

Subd. 1. For purposes of sections 116B.01 to 116B.13, the following terms have the meanings given them in this section.

Subd. 2. "Person" means any natural person, any state, municipality or other governmental or political subdivision or other public agency or instrumentality, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, and any other

entity, except a family farm, a family farm corporation or a bona fide farmer corporation.

Subd. 3. "Nonresident individual" means any natural person, or the personal representative of the person, who is not domiciled or residing in the state when suit is commenced.

Subd. 4. "Natural resources" shall include, but not be limited to, all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational and historical resources. Scenic and esthetic resources shall also be considered natural resources when owned by any governmental unit or agency.

Subd. 5. "Pollution, impairment or destruction" is any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur or any conduct which materially adversely affects or is likely to materially adversely affect the environment; provided that "pollution, impairment or destruction" shall not include conduct which violates, or is likely to violate, any such standard, limitation, rules, order, license, stipulation agreement or permit solely because of the introduction of an odor into the air.

Subd. 6. "Family farm" shall mean any farm owned by a natural person, or one or more natural persons all of whom are related within the third degree of kindred according to the civil law, at least one of whose owners resides on or actively operates said farm.

Subd. 7. "Family farm corporation" means a corporation founded for the purpose of farming and owning agricultural land, in which the majority of the voting stock is held by, and the majority of the stockholders are, members of a family related to each other within the third degree of kindred according to the rules of the civil law, and at least one

of whose stockholders is a person residing on or actively operating the farm, and none of whose stockholders are corporations.

Subd. 8. "Bona fide farmer corporation" means an association of two or more natural persons, one of which, if two persons are so associated, or the majority of which, if more than two persons are so associated, reside on, or are actively operating a farm.

HIST: 1971 c 952 s 2; 1985 c 248 s 70; 1986 c 444

=116B.03

116B.03 Civil actions.

Subd. 1. Any person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization, or other entity having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief in the name of the state of Minnesota against any person, for the protection of the air, water, land, or other natural resources located within the state, whether publicly or privately owned, from pollution, impairment, or destruction; provided, however, that no action shall be allowable hereunder for acts taken by a person on land leased or owned by said person pursuant to a permit or license issued by the owner of the land to said person which do not and can not reasonably be expected to pollute, impair, or destroy any other air, water, land, or other natural resources located within the state; provided further that no action shall be allowable under this section for conduct taken by a person pursuant to any environmental quality standard, limitation, rule, order, license, stipulation agreement or permit issued by the pollution control

agency, department of natural resources, department of health or department of agriculture.

Subd. 2. Within seven days after commencing such action, the plaintiff shall cause a copy of the summons and complaint to be served upon the attorney general and the pollution control agency. Within 21 days after commencing such action, the plaintiff shall cause written notice thereof to be published in a legal newspaper in the county in which suit is commenced, specifying the names of the parties, the designation of the court in which the suit was commenced, the date of filing, the act or acts complained of, and the declaratory or equitable relief requested. The court may order such additional notice to interested persons as it may deem just and equitable.

Subd. 3. In any action maintained under this section, the attorney general may intervene as a matter of right and may appoint outside counsel where as a result of such intervention the attorney general may represent conflicting or adverse interests. Other interested parties may be permitted to intervene on such terms as the court may deem just and equitable in order to effectuate the purposes and policies set forth in section 116B.01.

Subd. 4. Except as provided in sections 14.44, 14.63 to 14.68, 115.05, 116.07 and 542.03, any action maintained under this section may be brought in any county in which one or more of the defendants reside when the action is begun, or in which the cause of action or some part thereof arose, or in which the conduct which has or is likely to cause such pollution, impairment, or destruction occurred. If none of the defendants shall reside or be found in the state, the action may be begun and tried in any county which the plaintiff shall designate. A corporation, other than railroad companies, street railway companies, and street railroad companies whether the motive power is steam, electricity, or other power used by

these corporations or companies, also telephone companies, telegraph companies, and all other public service corporations, shall be considered as residing in any county wherein it has an office, resident agency, or business place. The above enumerated public service corporations shall be considered as residing in any county wherein the cause of action shall arise or in which the conduct which has or is likely to cause pollution, impairment or destruction occurred and wherein any part of its lines of railway, railroad, street railway, street railroad, without regard to the motive power of the railroad, street railway, or street railroad, telegraph or telephone lines or any other public service corporation shall extend, without regard to whether the corporation or company has an office, agent, or business place in the county or not.

Subd. 5. Where any action maintained under this section results in a judgment that a defendant has not violated an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health, or department of agriculture, the judgment shall not in any way estop the agency from relitigating any or all of the same issues with the same or other defendant unless in the prior action the agency was, either initially or by intervention a party. Where the action results in a judgment that the defendant has violated an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health or department of agriculture the judgment shall be res judicata in favor of the agency in any action the agency might bring against the same defendant.

HIST: 1971 c 952 s 3; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444

==116B.04

116B.04 Burden of proof.

In any action maintained under section 116B.03, where the subject of the action is conduct governed by any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the pollution control agency, department of natural resources, department of health, or department of agriculture, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant violates or is likely to violate said environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit, the defendant may rebut the prima facie showing by the submission of evidence to the contrary; provided, however, that where the environmental quality standards, limitations, rules, orders, licenses, stipulation agreements, or permits of two or more of the aforementioned agencies are inconsistent, the most stringent shall control. In any other action maintained under section 116B.03, whenever the plaintiff shall have made a prima facie showing that the conduct of the defendant has, or is likely to cause the pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, the defendant may rebut the prima facie showing by the submission of evidence to the contrary.

The defendant may also show, by way of an affirmative defense, that there is no feasible and prudent alternative and the conduct at issue is consistent with and reasonably required for promotion of the public health, safety, and welfare in light of the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not constitute a defense hereunder.

HIST: 1971 c 952 s 4; 1985 c 248 s 70

=116B.05

116B.05 Appointment of referee.

The court may appoint a referee, who shall be a disinterested person to take testimony and make a report to the court in any such action.

HIST: 1971 c 952 s 5

=116B.06

116B.06 Bond.

If the court has reasonable grounds to doubt the plaintiff's ability to pay any judgment for costs and disbursements which might be rendered against that plaintiff pursuant to chapter 549, in an action brought under section 116B.03, the court may order the plaintiff to post a bond or cash not to exceed $500 to serve as security for such judgment.

HIST: 1971 c 952 s 6; 1986 c 444

=116B.07

116B.07 Relief.

The court may grant declaratory relief, temporary and permanent equitable relief, or may impose such conditions upon a party as are necessary or appropriate to protect the air, water, land or other natural resources located within the state from pollution, impairment, or destruction. When the court grants temporary equitable relief, it may require the plaintiff to post a bond sufficient to indemnify the defendant for damages suffered because of the temporary relief, if permanent relief is not granted.

HIST: 1971 c 952 s 7

=116B.08

116B.08 Remittitur.

Subd. 1. If administrative, licensing, or other similar proceedings are required to determine the legality of the defendants' conduct, the court shall remit the parties to such proceedings. If administrative, licensing, or other similar proceedings are available to determine the legality of the defendants' conduct, the court may remit the parties to such proceedings. In so remitting the parties the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the air, water, land or other natural resources located within the state. In so remitting the parties the court shall retain jurisdiction of the cause pending completion thereof.

Subd. 2. Upon completion of such proceedings, the court shall adjudicate the impact of the defendants' conduct, program, or product on the air, water, land, or other natural resources located within the state in accordance with the preceding sections 116B.02 to 116B.07. In such adjudication, the court may order that additional evidence be taken to the extent necessary to protect the rights recognized in sections 116B.01 to 116B.13.

Subd. 3. Where, as to any such administrative, licensing, or other similar proceedings referred to above, judicial review thereof is available, notwithstanding any other provisions of law to the contrary, the court originally taking jurisdiction shall maintain jurisdiction for purposes of judicial review.

Subd. 4. Nothing in this section shall be applicable to any action maintained under section 116B.10 or to any appropriate administrative proceeding required thereunder.

HIST: 1971 c 952 s 8

==116B.09

116B.09 Intervention; judicial review.

Subd. 1. Except as otherwise provided in section 116B.10, in any administrative, licensing, or other similar proceeding, and in any action for judicial review thereof which is made available by law, any natural person residing within the state, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, or any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.

Subd. 2. In any such administrative, licensing, or other similar proceedings, the agency shall consider the alleged impairment, pollution, or destruction of the air, water, land, or other natural resources located within the state and no conduct shall be authorized or approved which does, or is likely to have such effect so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land, and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct.

Subd. 3. In any action for judicial review of any administrative, licensing, or other similar proceeding as described in subdivision 1, the court shall, in addition to any other duties imposed upon it by law, grant review of claims that the conduct caused, or is likely to cause pollution, impairment, or destruction of the air, water, land, or other

natural resources located within the state, and in granting such review it shall act in accordance with the provisions of sections 116B.01 to 116B.13 and the Administrative Procedure Act.
HIST: 1971 c 952 s 9

=116B.10
116B.10 Reviewal of state actions.

Subd. 1. Civil actions. As hereinafter provided in this section, any natural person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization, or other legal entity having shareholders, members, partners or employees residing within the state may maintain a civil action in the district court for declaratory or equitable relief against the state or any agency or instrumentality thereof where the nature of the action is a challenge to an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by the state or any agency or instrumentality thereof for which the applicable statutory appeal period has elapsed.

Subd. 2. Burden of proof. In any action maintained under this section the plaintiff shall have the burden of proving that the environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit is inadequate to protect the air, water, land, or other natural resources located within the state from pollution, impairment, or destruction. The plaintiff shall have the burden of proving the existence of material evidence showing said inadequacy of said environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit.

Subd. 3. Remittitur; judicial review. In any action maintained under this section the district court, upon a prima facie showing by the plaintiff of those matters specified in subdivision 2, shall remit the parties to the state agency or instrumentality that promulgated the environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit which is the subject of the action, requiring said agency or instrumentality to institute the appropriate administrative proceedings to consider and make indings and an order on those matters specified in subdivision 2. In so remitting the parties, the court may grant temporary equitable relief where appropriate to prevent irreparable injury to the air, water, land, or other natural resources located within the state. In so remitting the parties, the court shall retain jurisdiction for purposes of judicial review to determine whether the order of the agency is supported by the preponderance of the evidence. If plaintiff fails to establish said prima facie showing, the court shall dismiss the action and award such costs and disbursements as the court deems appropriate.

Subd. 4. Intervention. In any action maintained under this section, any natural person residing within the state; the attorney general; any political subdivision of the state; any instrumentality or agency of the state or of a political subdivision thereof; or any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party, provided that said person makes timely application to the district court prior to the court's remittance of the action as specified in subdivision 3.

Subd. 5. Venue. Any action maintained under this section shall be brought in the county in which is located the principal office of the state agency or instrumentality that

promulgated the rule, standard, order or permit which is the subject of the action.
HIST: 1971 c 952 s 10; 1985 c 248 s 70

==116B.11

116B.11 Jurisdiction; serving process.

Subd. 1. As to any cause of action arising under sections 116B.01 to 116B.13, the district court may exercise personal jurisdiction over any foreign corporation or any nonresident individual in the same manner as if it were a domestic corporation or the individual were a resident of this state.

This section applies if, in person or through an agent, the foreign corporation or nonresident individual: (a) Commits or threatens to commit any act in the state which would impair, pollute or destroy the air, water, land, or other natural resources located within the state, or (b) Commits or threatens to commit any act outside the state which would impair, pollute or destroy the air, water, land, or other natural resources located within the state, or (c) Engages in any other of the activities specified in section 543.19.

Subd. 2. The service of process on any person who is subject to the jurisdiction of the courts of this state, as provided in this section, may be made by personally serving the summons upon the defendant outside this state with the same effect as though the summons had been personally served within this state.

Subd. 3. Only causes of action arising from acts enumerated or referenced in subdivision 1 may be asserted against a defendant in an action in which jurisdiction over the defendant is based upon this section.

Subd. 4. Nothing contained in this section shall limit or affect the right to serve any process in any other manner

now or hereafter provided by law or the Minnesota rules of civil procedure.
HIST: 1971 c 952 s 11; 1986 c 444

=116B.12

116B.12 Rights and remedies nonexclusive.

No existing civil or criminal remedy for any wrongful action shall be excluded or impaired by sections 116B.01 to 116B.13. The rights and remedies provided herein shall be in addition to any administrative, regulatory, statutory, or common law rights and remedies now or hereafter available.
HIST: 1971 c 952 s 12

=116B.13

116B.13 Citation.

Sections 116B.01 to 116B.13 may be cited as the "Minnesota Environmental Rights Act."
HIST: 1971 c 952 s 14

[Document Taken Off Internet Minnesota Statutes 2001]
Minnesota Statutes 2001, Chapter 116D.

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=116D.01

116D.01 Purpose.

The purposes of Laws 1973, chapter 412, are: (a) to declare a state policy that will encourage productive and enjoyable harmony between human beings and their environment; (b) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of human beings; and (c) to enrich the understanding of the ecological systems and natural resources important to the state and to the nation.

HIST: 1973 c 412 s 1; 1986 c 444

=116D.02

16D.02 Declaration of state environmental policy.

Subd. 1. The legislature, recognizing the profound impact of human activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high density urbanization, industrial expansion, resources exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state government, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which human beings and nature

can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of the state's people.

Subd. 2. In order to carry out the policy set forth in Laws 1973, chapter 412, it is the continuing responsibility of the state government to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate state plans, functions, programs and resources to the end that the state may: (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations; (2) assure for all people of the state safe, healthful; productive, and aesthetically and culturally pleasing surroundings; (3) discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner; (4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever practicable, an environment that supports diversity, and variety of individual choice; (5) encourage, through education, a better understanding of natural resources management principles that will develop attitudes and styles of living that minimize environmental degradation; (6) develop and implement land use and environmental policies, plans, and standards for the state as a whole and for major regions thereof through a coordinated program of planning and land use control; (7) define, designate, and protect environmentally sensitive areas; (8) establish and maintain statewide environmental information systems sufficient to gauge environmental conditions; (9) practice thrift in the use of energy and maximize the use of energy efficient systems for the utilization of energy, and minimize the environmental impact from energy production and use; (10) preserve important existing natural habitats of rare and endangered species of plants, wildlife, and fish, and

provide for the wise use of our remaining areas of natural habitation, including necessary protective measures where appropriate; (11) reduce wasteful practices which generate solid wastes; (12) minimize wasteful and unnecessary depletion of nonrenewable resources; (13) conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy; (14) improve management of renewable resources in a manner compatible with environmental protection; (15) provide for reclamation of mined lands and assure that any mining is accomplished in a manner compatible with environmental protection; (16) reduce the deleterious impact on air and water quality from all sources, including the deleterious environmental impact due to operation of vehicles with internal combustion engines in urbanized areas; (17) minimize noise, particularly in urban areas; (18) prohibit, where appropriate, flood plain development in urban and rural areas; and (19) encourage advanced waste treatment in abating water pollution.
HIST: 1973 c 412 s 2; 1986 c 444

=116D.03

116D.03 Action by state agencies.

Subd. 1. The legislature authorizes and directs that, to the fullest extent practicable the policies, rules and public laws of the state shall be interpreted and administered in accordance with the policies set forth in sections 116D.01 to 116D.06.

Subd. 2. All departments and agencies of the state government shall: (1) on a continuous basis, seek to strengthen relationships between state, regional, local and federal-state environmental planning, development and management programs; (2) utilize a systematic, interdisciplinary approach

that will insure the integrated use of the natural and social sciences and the environmental arts in planning and in decision making which may have an impact on the environment; as an aid in accomplishing this purpose there shall be established advisory councils or other forums for consultation with persons in appropriate fields of specialization so as to ensure that the latest and most authoritative findings will be considered in administrative and regulatory decision making as quickly and as amply as possible; (3) identify and develop methods and procedures that will ensure that environmental amenities and values, whether quantified or not, will be given at least equal consideration in decision making along with economic and technical considerations; (4) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources; (5) recognize the worldwide and long range character of environmental problems and, where consistent with the policy of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize interstate, national and international cooperation in anticipating and preventing a decline in the quality of the world environment; (6) make available to the federal government, counties, municipalities, institutions and individuals, information useful in restoring, maintaining, and enhancing the quality of the environment, and in meeting the policies of the state as set forth in Laws 1973, chapter 412; (7) initiate the gathering and utilization of ecological information in the planning and development of resource oriented projects; and (8) undertake, contract for or fund such research as is needed in order to determine and clarify effects by known or suspected pollutants which may be detrimental to human health or to the environment, as well as to evaluate the

feasibility, safety and environmental effects of various methods of dealing with pollutants.
HIST: 1973 c 412 s 3; 1985 c 248 s 70; 1986 c 444

=116D.04

16D.04 Environmental impact statements.

Subd. 1. Repealed, 1980 c 447 s 10

Subd. 1a. For the purposes of this chapter, the following terms have the meanings given to them in this subdivision. (a) "Natural resources" has the meaning given it in section 116B.02, subdivision 4. (b) "Pollution, impairment or destruction" has the meaning given it in section 116B.02, subdivision 5. (c) "Environmental assessment worksheet" means a brief document which is designed to set out the basic facts necessary to determine whether an environmental impact statement is required for a proposed action. (d) "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, .financed, regulated, or approved by units of government including the federal government. (e) "Governmental unit" means any state agency and any general or special purpose unit of government in the state including, but not limited to, watershed districts organized under chapter 103D, counties, towns, cities, port authorities, housing authorities, and economic development authorities established under sections 469.090 to 469.108, but not including courts, school districts, and regional development commissions other than the metropolitan council.

Subd. 2. Repealed, 1980 c 447 s 10

Subd. 2a. Where there is potential for significant environmental effects resulting from any major governmental action, the action shall be preceded by a detailed environmental impact statement prepared by the responsible governmental unit. The environmental impact statement shall

be an analytical rather than an encyclopedic document which describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. The environmental impact statement shall also analyze those economic, employment and sociological effects that cannot be avoided should the action be implemented. To ensure its use in the decision making process, the environmental impact statement shall be prepared as early as practical in the formulation of an action. (a) The board shall by rule establish categories of actions for which environmental impact statements and for which environmental assessment worksheets shall be prepared as well as categories of actions for which no environmental review is required under this section. (b) The responsible governmental unit shall promptly publish notice of the completion of an environmental assessment worksheet in a manner to be determined by the board and shall provide copies of the environmental assessment worksheet to the board and its member agencies. Comments on the need for an environmental impact statement may be submitted to the responsible governmental unit during a 30 day period following publication of the notice that an environmental assessment worksheet has been completed. The responsible governmental unit's decision on the need for an environmental impact statement shall be based on the environmental assessment worksheet and the comments received during the comment period, and shall be made within 15 days after the close of the comment period. The board's chair may extend the 15 day period by not more than 15 additional days upon the request of the responsible governmental unit. (c) An environmental assessment worksheet shall also be prepared for a proposed action whenever material evidence accompanying a petition by not

less than 25 individuals, submitted before the proposed project has received final approval by the appropriate governmental units, demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects. Petitions requesting the preparation of an environmental assessment worksheet shall be submitted to the board. The chair of the board shall determine the appropriate responsible governmental unit and forward the petition to it. A decision on the need for an environmental assessment worksheet shall be made by the responsible governmental unit within 15 days after the petition is received by the responsible governmental unit. The board's chair may extend the 15 day period by not more than 15 additional days upon request of the responsible governmental unit. (d) The board may, prior to final approval of a proposed project, require preparation of an environmental assessment worksheet by a responsible governmental unit selected by the board for any action where environmental review under this section has not been specifically provided for by rule or otherwise initiated. (e) An early and open process shall be utilized to limit the scope of the environmental impact statement to a discussion of those impacts, which, because of the nature or location of the project, have the potential for significant environmental effects. The same process shall be utilized to determine the form, content and level of detail of the statement as well as the alternatives which are appropriate for consideration in the statement. In addition, the permits which will be required for the proposed action shall be identified during the scoping process. Further, the process shall identify those permits for which information will be developed concurrently with the environmental impact statement. The board shall provide in its rules for the expeditious completion of the scoping process. The determinations reached in the process shall be incorporated into the order requiring the

preparation of an environmental impact statement. (f) Whenever practical, information needed by a governmental unit for making final decisions on permits or other actions required for a proposed project shall be developed in conjunction with the preparation of an environmental impact statement. (g) An environmental impact statement shall be prepared and its adequacy determined within 280 days after notice of its preparation unless the time is extended by consent of the parties or by the governor for good cause. The responsible governmental unit shall determine the adequacy of an environmental impact statement, unless within 60 days after notice is published that an environmental impact statement will be prepared, the board chooses to determine the adequacy of an environmental impact statement. If an environmental impact statement is found to be inadequate, the responsible governmental unit shall have 60 days to prepare an adequate environmental impact statement.

Subd. 2b. If an environmental assessment worksheet or an environmental impact statement is required for a governmental action under subdivision 2a, a project may not be started and a final governmental decision may not be made to grant a permit, approve a project, or begin a project, until: (1) a petition for an environmental assessment worksheet is dismissed; (2) a negative declaration has been issued on the need for an environmental impact statement; (3) the environmental impact statement has been determined adequate; or (4) a variance has been granted from making an environmental impact statement by the environmental quality board.

Subd. 3. Repealed, 1980 c 447 s 10

Subd. 3a. Within 90 days after final approval of an environmental impact statement, final decisions shall be made by the appropriate governmental units on those permits which were identified as required and for which information was

developed concurrently with the preparation of the environmental impact statement. Provided, however, that the 90-day period may be extended where a longer period is required by federal law or state statute or is consented to by the permit applicant. The permit decision shall include the reasons for the decision, including any conditions under which the permit is issued, together with a final order granting or denying the permit.

Subd. 4. Repealed, 1980 c 447 s 10

Subd. 4a. The board shall by rule identify alternative forms of environmental review which will address the same issues and utilize similar procedures as an environmental impact statement in a more timely or more efficient manner to be utilized in lieu of an environmental impact statement.

Subd. 5. Repealed, 1980 c 447 s 10

Subd. 5a. The board shall, by January 1, 1981, promulgate rules in conformity with this chapter and the provisions of chapter 15, establishing: (1) the governmental unit which shall be responsible for environmental review of a proposed action; (2) the form and content of environmental assessment worksheets; (3) a scoping process in conformance with subdivision 2a, clause (e); (4) a procedure for identifying during the scoping process the permits necessary for a proposed action and a process for coordinating review of appropriate permits with the preparation of the environmental impact statement; (5) a standard format for environmental impact statements; (6) standards for determining the alternatives to be discussed in an environmental impact statement; (7) alternative forms of environmental review which are acceptable pursuant to subdivision 4a; (8) a model ordinance which may be adopted and implemented by local governmental units in lieu of the environmental impact statement process required by this section, providing for and

alternative form of environmental review where an action does not require a state agency permit and is consistent with an applicable comprehensive plan. The model ordinance shall provide for adequate consideration of appropriate alternatives, and shall ensure that decisions are made in accordance with the policies and purposes of Laws 1980, chapter 447; (9) procedures to reduce paperwork and delay through intergovernmental cooperation and the elimination of unnecessary duplication of environmental reviews; (10) procedures for expediting the selection of consultants by the governmental unit responsible for the preparation of an environmental impact statement; and (11) any additional rules which are reasonably necessary to carry out the requirements of this section.

Subd. 6. No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct. Subd. 6a. Prior to the preparation of a final environmental impact statement, the governmental unit responsible for the statement shall consult with and request the comments of every governmental office which has jurisdiction by law or special expertise with respect to any environmental effect involved. Copies of the drafts of such statements and the comments and views of the appropriate offices shall be made available to the public. The final detailed environmental impact statement and the

comments received thereon shall precede final decisions on the proposed action and shall accompany the proposal through an administrative review process.

Subd. 7. Regardless of whether a detailed written environmental impact statement is required by the board to accompany an application for a permit for natural resources management and development, or a recommendation, project, or program for action, officials responsible for issuance of aforementioned permits or for other activities described herein shall give due consideration to the provisions of Laws 1973, chapter 412, as set forth in section 116D.03, in the execution of their duties.

Subd. 8. In order to facilitate coordination of environmental decision making and the timely review of agency decisions, the board shall establish by rule a procedure for early notice to the board and the public of natural resource management and development permit applications and other impending state actions having significant environmental effects.

Subd. 9. Prior to the final decision upon any state project or action significantly affecting the environment or for which an environmental impact statement is required, or within ten days thereafter, the board may delay implementation of the action or project by notice to the agency or department and to interested parties. Thereafter, within 45 days of such notice, the board may reverse or modify the decisions or proposal where it finds, upon notice and hearing, that the action or project is inconsistent with the policy and standards of sections 116D.01 to 116D.06. Any aggrieved party may seek judicial review pursuant to chapter 14.

Subd. 10. Decisions on the need for an environmental assessment worksheet, the need for an environmental impact statement and the adequacy of an environmental impact statement may be reviewed by a

declaratory judgment action in the district court of the county wherein the proposed action, or any part thereof, would be undertaken. Judicial review under this section shall be initiated within 30 days after the governmental unit makes the decision, and a bond may be required under section 562.02 unless at the time of hearing on the application for the bond the plaintiff has shown that the claim has sufficient possibility of success on the merits to sustain the burden required for the issuance of a temporary restraining order. Nothing in this section shall be construed to alter the requirements for a temporary restraining order or a preliminary injunction pursuant to the Minnesota rules of civil procedure for district courts. The board may initiate judicial review of decisions referred to herein and may intervene as of right in any proceeding brought under this subdivision.

Subd. 11. If the board or governmental unit which is required to act within a time period specified in this section fails to so act, any person may seek an order of the district court requiring the board or governmental unit to immediately take the action mandated by subdivisions 2a and 3a.

Subd. 12. No attempt need be made to tabulate, analyze or otherwise evaluate the potential impact of elections made pursuant to section 116C.63, subdivision 4, in environmental impact statements done for large electric power facilities. It is sufficient for purposes of this chapter that such statements note the existence of section 116C.63, subdivision 4.

Subd. 13. This section may be enforced by injunction, action to compel performance, or other appropriate action in the district court of the county where the violation takes place. Upon the request of the board or the chair of the board, the attorney general may bring an action under this subdivision.

HIST: 1973 c 412 s 4; 1975 c 204 s 74; 1975 c 271 s 6; 1980 c 447 s 1-8; 1980 c 614 s 88; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 399 art 2 s 1; 1986 c 400 s 1; 1986 c 444; 1Sp1986 c 3 art 2 s 41; 1988 c 501 s 3,4; 1989 c 209 art 2 s 1; 1990 c 391 art 8 s 27; 1992 c 464 art 2 s 1

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF ST. LOUIS SIXTH JUDICIAL DISTRICT
FILE NO. C3-98-601186

ERIC RINGSRED
Plaintiff,

v.

CITY OF DULUTH ECONOMIC DEVELOPMENT AUTHORITY, ET AL.,
Defendant

ORDER REGARDING MOTION FOR ORDER TO SHOW CAUSE AND CONTEMPT

This matter came before the Court at the courthouse in Duluth on December 27, 1999, upon the motion of plaintiff for an order to show cause and the application of sanctions by reason of alleged acts of contempt of certain defendants herein. Plaintiff appeared in person, *pro se*, A&L Development, Inc. appeared by Joseph Mihalek, its attorney. The City of Duluth and DEDA appeared by Alison Lutterman, Assistant City Attorney for the City of Duluth. There was no appearances by other named defendants. The Court having had benefit of the comments of counsel, having reviewed its files herein and the written submissions of plaintiff with regard to the matters currently before the Court does not make and enter the following:

ORDER

1. Plaintiff's motion for an order to show cause is denied;

2. Plaintiff's motion for an award of sanctions is denied;

3. The attached memorandum shall constitute a part of this order including such facts as may be found therein.

Dated at Duluth, Minnesota, this 10th day of January, 2000.

BY THE COURT:

Terrry C. Hallenbeck, District Court Judge

MEMORANDUM

The Court will address the numbered segments of plaintiff's affidavit in the order presented therein.

1. Any allegations against the assistant city attorney mentioned in the portion of plaintiff's application are more appropriate for review by the State Board of Professional Responsibility which has the benefit of investigative resources not at the disposal of the Court. It is the Court's understanding, based upon newspaper reports concerning actions taken by a City Councilor, that a referral to that entity was made by said councilor shortly after the occasion of the attorney's testimony. The Court is confident that body is better positioned to investigate and evaluate any alleged misconduct which may have occurred.

2. The reported discussions by plaintiff with others concerning the existence of an offer to purchase and redevelop the Strand Theater are hearsay as presented in the

context of plaintiff's motion. As such it is not appropriate that the Court consider them, nor will it do so.

3. The allegations set forth by plaintiffs are significantly hearsay in nature and relate to activities allegedly undertaken by defendants prior to the issuance of any order. Plaintiff reports conversations allegedly overheard by another individual in his affidavit of September 7, 1998. Also, plaintiff does not specifically delineate which of the individual defendants plaintiff contends were active participants in the conduct alleged.

4. As defendants suggest, it is not improper to meet with witnesses whose testimony it is anticipated will be presented at an upcoming court proceedings as long as such witnesses are not parties. While it would be improper to attempt to coerce such witnesses there is no non-hearsay record evidence to suggest coercion was attempted.

5. The Court is not persuaded a pretrial expression of opinion by litigants is an inappropriate attempt to affect court proceedings. The Court is wise unconvinced that it may impinge upon parties' Fist Amendment rights as would be implicit should the Court rule as plaintiff suggests.

6. The allegation concerning threats to Mr. Aubut is unsupported by sworn firsthand affidavit. If true the allegations made by plaintiff might well constitute criminal misbehavior more appropriate for investigation by prosecuting and police authorities than the Court in the context of an order to show cause proceeding.

7. The allegations of plaintiff with regard to conduct of the named assistant city attorney were, the Court understands, brought to the attention of the State Board of Professional Responsibility by a member of the Duluth City Council. The Court is comfortable that any improper activity is more appropriately evaluated in that context.

8. Plaintiff is correct that the Court's order of October 5, 1998, while it did not create a Historic District, identified an "historical resource" and directed that such resource be accorded those protections to which it is entitled under Minnesota Statute. The Court's determination in this respect was not disturbed on appeal. Plaintiff is also correct that such requirement applies to the ongoing development of the Soft Center project. The "Project" as defined by the Court's order, includes the related parking ramp, the related skywalk, the utilities, and any and all other construction and demolition activities related thereto with or affecting the "natural resource." Plaintiff alleges certain parties have in certain unspecified respects allegedly failed to proceed in accordance with applicable Minnesota Statute as ongoing development efforts have been taken with reference to the Soft Center Project. Plaintiff does not specify in what particulars these alleged transgressions have taken place, nor does he specify what entities or persons committed these alleged acts. His allegations are simply too general and unsubstantiated to justify the Court granting relief of the type sought by plaintiff.

In any event, the Court perceives that the issues both factually and legally, are too complex to enable a reasonable assessment of the claims plaintiff now makes to be undertaken in the context of an order to show cause proceeding. In essence it appears the procedure which plaintiff contemplates would place the court and the parties in the position of conducting discovery before the Court in the context of a hearing. Plaintiff seeks to call various witnesses to testify, presumably to determine what information they may have, if any, regarding the allegations plaintiff puts forward. The Court does not perceive this is a wise use of judicial resources nor of the resources of the parties. Other procedural approaches appear to be available to plaintiff more ideally suited to investigation of the issues plaintiff seeks to present.

9. With regard to plaintiff's allegations under this section of his written submissions, he once again relies upon hearsay information. He does not specify what specific parties allegedly undertook what specific actions. Further, with regard to the alleged misconduct of attorneys involved in presenting information to the court, the Court concludes such issues are better considered by the State Board of Professional Responsibility should plaintiff or others conclude it appropriate to bring these items to the attention of such body. It rather than the Court is better able to investigate and assess these matters in the first instance under the procedures and rules adopted in Minnesota for dealing with such matters.

10. The issues plaintiff seeks to present under this segment of his written submissions relate to alleged activities by unnamed individuals and are based upon hearsay. The exact timing of the permit request is unspecified nor are the circumstances of the issuance delineated. In this instance plaintiff's request for relief serves to "drag net" alleged violations of ordinance or statute into this proceeding for administration. If such conduct occurred, and if it violated applicable statute or ordinance, the Court determines that separate proceedings aimed specifically at those alleged transgressions are the more appropriate vehicle for addressing them.

11. As with other allegations directed at persons who were attorneys and officers of the Court, the Court concludes plaintiff's complaints are more appropriately directed to the State Board of Professional Responsibility for investigation and assessment under applicable laws, rules and Canons. As counsel for DEDA suggested, wrapping the alleged violations of these procedural requirements into this proceeding is more than likely outside the scope thereof. Further if, as plaintiff contends, there has been inappropriate conduct by persons before DEDA, a separate proceeding with

attendant procedural safeguards and focused discovery is a more fair and appropriate vehicle to explore the situation.

12. Plaintiff's allegations under this section of his written submissions are once again based upon hearsay. Further, if the competitive bidding Statute has been violated it is not appropriate that litigation relative to that matter be wrapped into these proceedings. Rather, any such transgressions are more appropriately the focus of a separate proceeding accompanied by appropriate discovery and other procedural safeguards to which the parties are entitled.

13. The alleged transgressions of public officials discussed in this portion of plaintiff's submission are based, once again, upon hearsay information in the context of plaintiff's written submissions. They likewise are not appropriate for administration in the context of this litigation but should be addressed in separate proceedings. Such proceedings might possibly encompass other allegations of plaintiff contained within other segments of his pleadings presently before the court.

13. The alleged transgressions of public officials discussed in this portion of plaintiff's submission are based, once again, upon hearsay information in the context of plaintiff's written submissions. They likewise are not appropriate for administration in the context of the litigation but should be addressed in separate proceedings. Such proceedings might possibly encompass other allegations of plaintiff contained within other segments of his pleadings presently before the court.

14. This section of plaintiff's submission, once again based upon hearsay information, related to other allegations concerning the bidding process and alleged violations of Minnesota municipal contracting law. Such alleged violations are routinely made the subject of litigation specifically focused upon alleged misconduct. Such

proceedings are treated as any other litigation with attendant procedural and discovery rights accorded the parties. It would not be fair nor is it appropriate for this Court to undertake to administer claims of this type in the context of this proceeding as it is currently situated.

15. This allegation of plaintiff is once again unsupported by specific documentation or affidavit substantiating his claims. Plaintiff's affidavit does not specify the particular respects in which applicable statutes have not been followed nor does it specify what entities or persons have been derelict in which particulars. There is no information on what procedural steps related to administration under our environmental laws were or were not followed by persons involved in the ongoing development of the project. Plaintiff does not specify whether a determination was or was not made that an EAW, for example was or was not necessary or undertaken and if so what the results may have been. In short, there is nothing before the Court which enables it to assess whether or not appropriate and necessary steps have been taken. Most importantly, the Court is not comfortable this proceeding as it is currently situated is a proper vehicle for an appropriate investigation of plaintiff's claims.

CONCLUSION

In reviewing plaintiff's allegations the Court does not mean to suggest it has determined any of them to be valid or invalid. The Court recognizes they are claims being asserted by plaintiff and the Court has been required to respond to them in terms of assessing their current procedural posture before the Court. That is all the court has done. In most instances the Court has determined the factual submissions provided by plaintiff to date are simply insufficient to justify any further proceedings. More importantly, however, the Court has concluded administering

these matters as a sort of "tail" to the proceedings which were truly the subject of this matter could result in an unfair method of procedure and an inappropriate employment of judicial resources. Many of the issues which plaintiff raises could be well be the subject of separate proceedings subject to the rights and responsibilities of the parties under our Rules of Procedure including those applicable to discovery. The Court has concluded certain of plaintiff's allegations are better addressed by the State Board of Professional Responsibility should plaintiff elect to present them to that body for its consideration: To a certain extent, based on information coming to the Court's attention some time ago, it is of the impression that a referral of at least certain of the items raised by plaintiff was earlier made by the Duluth City Counselor.

For all the foregoing reasons, therefore, in the interest of justice and to secure an appropriate review of the issues sought to be raised in appropriate manner, the Court has declined to grant any of the relief plaintiff requested.

T.C.H..

Supreme Court, U.S.
FILED
NOV 20 2002

No. 02-609

In The
Supreme Court of the United States

ERIC RINGSRED, an individual,

Petitioner,

vs.

(1) CITY OF DULUTH, a municipal corporation; and the following City officials individually and in their official capacities: (2) GARY L. DOTY, Mayor; (3) CYNTHIA ALBRIGHT, Assistant City Attorney; (4) BRYAN BROWN, City Attorney; (5) ROBERT ASLESON, Assistant City Attorney; (6) JOHN SCHWEIGER, Special Projects Manager; (7) JOHN SMEDBERG, Assistant City Attorney; (8) DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND ITS DIRECTOR, CYNTHIA ALBRIGHT, individually and in her official capacity; (9) TEAM DULUTH; (10) SOFT CENTER-DULUTH, INC.; (11) MICHAEL MCNAMARA; (12) THE DULUTH AREA CHAMBER OF COMMERCE and (13) its CEO DAVID ROSS,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner's claims are all intertwined with previous state court actions which have been litigated to their conclusion by Petitioner. In May of 1998, Petitioner, Eric Ringsred (herein "Ringsred"), brought suit in Minnesota State District Court, on behalf of the State of Minnesota, and against the City of Duluth, Duluth Economic Development Authority, Mayor Gary Doty, and others under the Minnesota Environmental Rights Act, Minnesota Statutes §116B.01 ("MERA") and the Minnesota Environmental Policy Act, Minnesota Statutes §116D.01, et seq. ("MEPA"). According to Petitioner's Complaint, the purpose of the earlier suit was to protect buildings, which were located in the "Duluth commercial historic district" from a demolition designed to make space for the erection of the "Soft Center/Technology Village" project. In particular, Ringsred sought, on behalf of the State of Minnesota, to enjoin the "Soft Center/Technology Village" project and require the City to prepare an Environmental Impact Statement ("EIS"). The trial court issued two temporary restraining orders (which were subsequently vacated) and then held a trial on the merits during September and October of 1998.

On October 5, 1998, the trial court issued an order finding the area in dispute to be a portion of a larger historical district and thus to be a natural resource under MERA. *Dckt. #51, Ex. 1.* However, the trial court found that the Soft Center/Technology Village project should proceed. *Id.* The court reasoned that the project would not have a significant impact on the "natural resource" since it was only a part of the district, and further, that any effect would further diminish over time. *Id.* The court also found that there was no feasible alternative site for the project and the project would yield substantial economic and

educational benefits to the City and its citizens. *Id.* The trial court allowed the demolition of the buildings in dispute at the time of the trial, but imposed a mandatory injunction requiring the Defendants to comply with the environmental protections for any future development on the site. *Id.*

Petitioner Ringsred appealed the trial court's order to the Minnesota Court of Appeals, which affirmed the trial court's decision in all respects. *See, State of Minnesota by Ringsred v. City of Duluth*, 1999 WL 618613 (Minn. App. 1999). *Dckt. #51, Ex. 5.* No further appeal was taken by Ringsred.

In December of 1999, Ringsred filed in state court a motion for an order to show cause and an application for sanctions against the Defendants in the state court action. Ringsred contended that the Defendants in the state court action had violated various Minnesota Statutes, including giving false testimony concerning federal funding for the Soft Center project and regarding potential buyers and users for the Strand Theater (a vacant adult movie theater); the preemptive demolition of the Strand Theater; the conduct of prejudicial pretrial meetings with Ringsred witnesses; the dissemination of prejudicial pretrial publicity; the threatening of Ringsred witnesses; the interference with the service of the subpoena on one of Ringsred's witnesses; the disobedience of the court's mandatory injunction; the misrepresentation of facts during the hearing on Ringsred's motion for a temporary restraining order; the demolition of a building without a building permit; the demolition of a building without authorization by the DEDA; the demolition of a building without taking competitive bids; and the attempt to cover up the failure to take competitive bids. *Dckt. #51, Ex. 6.* The state trial

court denied Ringsred's motion because most of his allegations were based on hearsay and because, in the court's view, a motion for an order to show cause and for sanctions was an inappropriate means of raising such issues. *See Petitioner's Appendix to Petition for Writ of Certiorari (hereinafter "App.") Document #7.* No appeal was taken.

Instead, Ringsred brought this action under Title 42 U.S.C. §1983 alleging that the Government Defendants,[1] the Soft Center Defendants,[2] and the Chamber Defendants,[3] infringed upon the Petitioner's federal constitutional rights regarding due process, equal protection, and fair access to the courts. *Ringsred Petition, p. 7.* The Petitioner's claims are based on the unsubstantiated allegations that certain actions were taken by the Respondents during prior litigation in state court involving the Petitioner and some, but not all, of the Respondents in the federal case. *Id.* Petitioner has also alleged that Respondents defamed Petitioner publicly. *Id.*

Government Defendants then brought a motion to dismiss under Federal Rule 12(b) for failure to state a claim upon which relief could be granted and for summary judgment. *Dckt. #48.* Petitioner, in response to the Government Defendants' motion, brought a motion to amend his complaint, presenting, in essence, the same claims

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[1] All of the defendants, except the Soft Center Defendants, hereinafter defined, and the Chamber Defendants, hereinafter defined.

[2] Soft Center-Duluth, Inc. and Michael McNamera, in his capacity as an employee of Soft Center-Duluth, Inc.

[3] Team Duluth, Michael McNamera, the Duluth Area Chamber of Commerce and its CEO, David Ross.

previously denied by the State District Court. *Dckt. #70, 71.*

Soft Center Defendants and Chamber Defendants both brought summary judgment motions. *Dckt. #83, 84, 94, 95.* The Soft Center Defendants' summary judgment was based on the fact that Petitioner's complaint failed to state any cause of action against them. *Dckt. #84.*[4] Together with the Chamber Defendants, the Soft Center Defendants also contended that they were not acting under color of state law and therefore could not be held liable under 42 U.S.C. §1983. *Dckt. #84,95.*

Magistrate Judge Erickson in his recommendation to grant all the Respondents' summary judgment motions found that:

> Notably, the Plaintiffs allege no occasion when they were unable to present claims, or evidence in support of any claim, to the State Court, or where they have declined to advance a claim, make an argument, or otherwise petition a Court for relief, on account of some fear of retaliation at the hands of the Defendants. Rather, the Plaintiffs suggest, by mere inference, that the result reached by the State Court would have been different had the Defendants not engaged in the acts of which they are accused. Insofar as we are

[4] It is worthy to note that Ringsred addresses each of his claims against all the defendants and does not distinguish between defendants in this appeal. However, Ringsred has testified that he has no claims against the Soft Center Defendants. *See, Soft Center Summary Judgment Memorandum, Dckt. #84; Affidavit of Roy Christianson, Ex. B and C, Dckt. #85.*

> aware, and our research has been extensive, this is a case of first impression.
>
> Some learn from history, others are content to relive it. In this instance, any regression, so as to relitigate the past, is foreclosed by controlling Federal precedent. After a painstaking review of the Record presented, we can applaud the Plaintiffs for the novelty of their claims but we conclude that none of their causes of action can survive the Defendants' dispositive Motions and, therefore, we recommend that those Motions be granted.

Report and Recommendation of the Federal Magistrate, filed October 22, 2001, as Docket No. 118 (hereinafter the "R & R"). *App. #1, p. 16.* The R & R recommended that the Petitioner's motion to amend their complaint be denied and that the motions of defendants be granted. *Id.*

On November 8, 2001, Petitioner filed objections to the Magistrate's report. *Dckt. #121.* Responses from all Respondents were filed with the Court. *Dckt. #123, 124, 125.* The District Court reviewed Magistrate Judge Erickson's report and recommendation as well as Plaintiff's objections to the report. *App. #2, p. 49.* The Court conducted a de novo review of the objected-to portions of the report and was "satisfied that Judge Erickson's recommended disposition is fully supported by the record before him and by controlling legal precedent. The report and recommendation is thorough and the legal analysis sound." *Id.* The Court then ordered that the objections were overruled, the report and recommendation adopted, granted all the Respondents' motions for summary judgment and dismissed the Complaint, with prejudice. *Id., pp. 49-50.*

On December 26, 2001, Petitioner Eric Ringsred filed a Notice of Appeal. *Dckt. #128.* Responses from all Respondents were filed with the Court of Appeals. The Appellate Court reviewed the record and affirmed the dismissal of the federal claims with prejudice and the dismissal of any state claims without prejudice. *See, App. #3, p. 52.*

On September 24, 2002, Petitioner Eric Ringsred filed a Petition for Writ of Certiorari. The case was docketed on October 24, 2002, as case no.02-609.

SUMMARY OF THE ARGUMENT

The Petitioner fails to set forth a proper reason for granting Writ of Certiorari under the Supreme Court Rules of Procedure. The District Court correctly held that Ringsred did not have the proper standing to bring many of the claims brought in this action. Ringsred does not have standing to bring a claim for violation of due process on a representational basis on behalf of the State of Minnesota because the State has no right to such a claim. Ringsred has failed to allege a valid property interest giving him the necessary standing to bring this action. The District Court correctly held that it did not have subject matter jurisdiction to hear Ringsred's claims under the *Rooker-Feldman* doctrine.

ARGUMENT

1. Petitioner has failed to state a compelling reason for granting a Writ of Certiorari under Rule 14 of the Supreme Court Rules of Procedure.

Petitioner's petition for Writ of Certiorari should be denied for failing to state a compelling reason for allowance of the writ. Rule 14(1)(h) of the Supreme Court Rules, states:

> A petition for Writ of Certiorari shall contain, in order indicated:
>
> > (h) A direct and concise argument amplifying the reasons relied on for allowance of the writ. *See* Rule 10.

The Petitioner's petition does not contain an argument stating a reason for allowance of the writ. Rule 10 of the Supreme Court Rules, which states the character of reasons the court considers, states:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> > (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted usual course of judicial proceedings, or sanctioned

> such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be settled, by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

The Petitioner does not state an argument under any of the reasons under Rule 10. The Petitioner does argue that the matter is one of "first impression." The matter was one of first impression because of the vagueness of the Petitioner's allegations. Magistrate Judge Erickson recognized that the Petitioner was asking the court to make conclusions on mere inferences. The court was also left with the responsibility of trying to discern the Petitioner's causes of action. Magistrate Judge Erickson stated:

> By and large, the Complaint does not differentiate between the Defendants, or specifically identify which of the Defendants committed which misdeed. Moreover, many of their allegations are so vague and sweeping, that they afford the Defendants with little notice, or forewarning, of the specific misconduct of which they are accused.

The Petitioner has once again left the court with the responsibility of trying to discern what his cause of action is by not stating his reason for allowance of the writ. The Petitioner states no compelling reason why the writ should be granted. The decision of the Eighth Circuit Court of Appeals is not in conflict with the decision of another United States Court of Appeals decision nor has the Eighth Circuit's decision so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

The Eighth Circuit's decision is consistent with other appellate courts of this nation and Petitioner cites no conflicting caselaw. Further, the decisions of the Eighth Circuit and the Federal District Court are based on the well-established *Rooker-Feldman* doctrine, which was instituted almost eighty years ago. *Rooker v. Fidelity Trust Company*, 263 U.S. 413 (1923). Where as here, the decision below is based on well-established, non-controversial precedent and is consistent with other appellate courts, Petitioner's petition for Writ of Certiorari should be denied.

The decisions of the state court, where the Petitioner initially started this action, were not made in a state court of last resort. The Petitioner appealed once to the Minnesota Court of Appeals, but he did not seek review by the Minnesota Supreme Court. The Petitioner's state court actions also did not contain an important federal question but rather were actions brought under state statutes. The state court also did not decide an important question of federal law that has not been settled by this court. There was no federal law involved until the Petitioner brought his action to Federal court, which was properly dismissed under the *Rooker-Feldman* doctrine.

Therefore, Petitioner's petition should be denied for failing to state a compelling reason for allowing a writ under Rule 10 and Rule 14(1)(h).

2. The District Court properly granted all Respondents' motions for summary judgment when it found that Ringsred lacked standing to assert the Constitutional rights of access to the courts, due process or equal protection.

Petitioner Ringsred claims that his First Amendment rights of access to the courts as well as due process and equal protection have been denied by the District Courts. However, an appellant cannot creatively invoke the First Amendment in order to restate a claim for relief that has been rejected on the merits by the state court. *Lemonds v. St. Louis County*, 222 F.3d 488, 494 (8th Cir. 2000). In *Lemonds* the court found that:

> Although technically the suits invoke distinct constitutional provisions, as a substantive matter they both challenge the basic fairness of the petition process based on the concept of lack of notice. Thus, the first amendment and equal protection arguments presented to the district court appear to be nothing more than creative attempts to reclothe the failed due process claim in new constitutional garb. As such, these arguments present us with a situation in which a decision favorable to appellants could "only be predicated upon a conviction that the state court was wrong." *Pennzoil Co. v. Texaco, Inc.*, 107 S.Ct. 1519 (1987) (Marshall, J., concurring). Without commenting on the merits of appellants' arguments, we simply reiterate that federal plaintiffs cannot by artful pleading obtain a hearing of disguised state court appeals that

> would otherwise be subject to a *Rooker-Feldman* bar. (Citations omitted).

Id.

Much of Ringsred's claim of denial of access to the Courts is based on the "preemptive" demolition of the Strand Theater and three other buildings. However, these very same claims were heard by the state court and an order was issued. The Federal Court found:

> Notably, however, the State District Court heard these contentions, and was unmoved to order the equitable relief that Ringsred then sought. We have no basis to conclude, as the Plaintiffs imply, that the State Court was powerless to act if, in fact, the Court determined that its integrity was being impugned either by the partial razing of the Strand Theater in August of 1998, or by the subsequent destruction of three buildings in December of that same year. The State Court had a full panoply of equitable means to forestall, indefinitely, any further demolition, and to require a faithful, though probably less than perfect restoration, if that Court had been persuaded that such measures were warranted.

R & R, pp. 34-35. Ringsred has not been denied access to the courts, where as here, the issues have been fully litigated in the courts below.

Ringsred misstates or misinterprets the magistrate's Recommendation and Report, as affirmed by the District Court and Court of Appeals, after review of the Objections to the Report filed by Ringsred. The District Court found that:

> In determining whether a plaintiff has properly asserted a claimed violation of due process, the

> first inquiry is into whether there exists a liberty or property interest which the defendants have denied to that plaintiff. *See, Kentucky Dept. of Corrections v. Thompson,* 490 U.S. 454, 460 (1989). . . . In this case Ringsred's claim does not survive the first prong of the analysis, as we find no property, or liberty interest, which, under the circumstances presented, was personally held by Ringsred.
>
> . . . As the caption of the State Court case accurately reflects, the claims that Ringsred was there prosecuting were the claims of the State of Minnesota.
>
> . . . As a consequence, if any property or liberty interest was impaired, it was the interest of the State of Minnesota, which does not here join in the Plaintiffs' Section 1983 claim.

R & R, pp. 25-27. Further, the Court noted that the State of Minnesota could not join such a suit since a State is not entitled to the protection of Section 1983. R & R, note, 16, p. 28, citing *Commonwealth of Pennsylvania v. Porter,* 659 F.2d 306, 314 (3rd Cir. 1981). The District Court then analyzed and found that Ringsred, on an individual basis, had not been denied his constitutional right to access to the courts.

Ringsred appeals this portion of the decision on, apparently, two grounds. First he claims that First Amendment rights (which include access to the courts) are applied to matters of public concern and he as an individual was denied that right. However, the Court carefully analyzed this exact issue, and found, where as here, the state, had not joined this suit, nor could it, that Ringsred had no standing to bring this matter in a representational

capacity on behalf of the state. R & R, p. 30. Ringsred cannot assert a claim on behalf of a party which had no right itself to assert such a claim. A State cannot bring a claim for a Section 1983 violation. *See, R & R, note 16 and the cases cited thereunder.*

3. *Logan v. Zimmerman Brush Co.*, 445 U.S. 422, 102 S.Ct. 1148 does not apply.

The Petitioner argues that he has a property right in his "cause of action". The Petitioner cites *Logan v. Zimmerman Brush Co.,* 102 S.Ct. 1148 (1982) in support of this argument. *Petitioner's Petition, p. 13.* The Petitioner's case and *Logan* are distinguishable in the outset due to the fact that the parties in *Logan* followed proper court procedure in bringing their appeals in the proper jurisdictional courts. The parties in *Logan* had exhausted their stated court remedies and then petitioned the United States Supreme Court.

Logan was also fighting for his day in court. In *Logan*, the court stated "as our decisions have emphasized time and again, the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merits fairly judged. Thus it has become a truism that 'some form of hearing' is required before the owner is finally deprived of a protected property interest." *Id.* at 1156. Logan was being deprived of his day in court because of a violation of a procedural rule, which was not the fault of Logan. *Id.*

Ringsred enjoyed a full state and evidentiary hearing and an appeal to the Minnesota Court of Appeals but he did not exhaust his state court remedies before bringing his cause of action to the Federal Court. He did not

attempt to appeal to the Minnesota Supreme Court after the Minnesota Court of Appeals affirmed Judge Hallenbeck's ruling on Ringsred's MERA and MEPA claims. Ringsred did not appeal Judge Hallenbeck's dismissal of his "order to show cause" but was clearly given his day in court.

4. Petitioner failed to show the District Court any Private Right or Interest.

The final basis for Ringsred's appeal is his claim that he did hold a private property interest and thus had a right to assert a claim for denial of access to the Courts. Ringsred, however, failed to show to the District Court any personal right or interest that would give him the requisite standing to assert this claim. Ringsred failed to allege or prove to the District Court that he had any direct ownership, or other property interest in any of the buildings which were demolished, and he readily admits that he has not lost any business due to what he describes as the Respondents' "unlawful recruitment of local businesses." *R & R, p. 49, citing Ringsred Deposition at 77-79.*

For the first time on Appeal to the Eighth Circuit Court, Ringsred asserted that he did have such an interest. *See, Appellant's Brief to the Eighth Circuit Ct. of Appeals, p. 24.* This interest is limited to being a "sometime" silent partner to the owner of a company that had some sort of tenancy agreement in the Pastoret-Stenson Building. *Dckt. #82, pp. 173-174.* The operating partner did not dispute or litigate the tenancy termination. *Id.* Appellants cannot raise this issue/claim for the first time on appeal. *Morrow v. Greyhound Lines, Inc.*, 541 F.2d 713,

724 (8th Cir. 1976). Moreover, this rather tenuous relationship, does not escape the *Rooker-Feldman* bar.

5. The *Rooker-Feldman* doctrine is a bar to federal jurisdiction over Petitioner's cause of action.

Magistrate Judge Erickson recommended that all claims of the plaintiff be dismissed for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* Doctrine. *See, R & R, pp. 36-44 (Dckt. #118).* The District Court supported the recommendation. *See,* Order of the Federal District Court, filed November 26, 2001, Docket #126. The Eighth Circuit Court of Appeals then affirmed the District Court. *See Petitioner's Petition, appendix, p. 53, Judgement of the Eighth Circuit Ct. of Appeals.* Ringsred persists in arguing that his, or any other public interest litigants', Constitutional rights regarding due process, equal protection, and fair access to the courts have been taken away by the Eighth Circuit Court's decision. He is mistaken in that conclusion. Ringsred was provided his right to be heard as a public interest litigant in the State District Court. When his efforts proved unsuccessful, Ringsred attempted to relitigate the same issues anew in Federal Court. The *Rooker-Feldman* doctrine does not provide Ringsred with that luxury.

In finding that the *Rooker-Feldman* doctrine barred the constitutional claims, Federal Magistrate Judge Erickson stated:

> The *Rooker-Feldman* doctrine presents a subject matter jurisdictional bar to general constitutional challenges brought in Federal Court, when the constitutional challenges are essentially

> appeals from a State Court judgment, or are inextricable intertwined with claims prosecuted in State Court. *See, District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Company*, 263 U.S. 413, 416 (1923); *Lemonds v. St. Louis County*, 222 F.3d 488, 492-93 (8th Cir. 2000) ("The *Rooker-Feldman* Doctrine forecloses not only straightforward appeals but also more indirect attempts by federal plaintiffs to undermine state court decisions."), cert. denied *sub nom., Halbman v. St. Louis County*, 531 U.S. 1183, 121 S. Ct. 1168 (2001); *Charchenko v. City of Stillwater*, 47 F.3d 981, 983 (8th Cir. 1995). In other words, when a case seeks a review of a State Court judgment, or is inextricably intertwined with the State Court judgment, the Federal Courts, with the exception of the United States Supreme Court, lack subject matter jurisdiction to decide the matter. *See, Lemonds v. St. Louis County, supra*.

R & R, pp. 36-37. In applying this legal precedent to the underlying facts, Magistrate Judge Erickson found:

> The intertwining of Ringsred's current claims, and those he advanced in the State Court proceeding, cannot be seriously contested. If, as Ringsred continues to allege, the Defendants have violated the terms of a State Court Judgment, we can see no reason to allow Ringsred to ignore that Judgment, with impunity, and proceed with the same claims in a Section 1983 vehicle in Federal Court, in order that he may seek monetary damages, in substantial sums, which were unavailable to Ringsred in the State Court, for conduct that the State Courts found to be compliant with the State Court's injunction, and with the governing law. While Ringsred may well

be disappointed in the rulings of the Minnesota Courts, we do not sit as a Court of Appeals on State Court matters. Ringsred had full access to the State Court, and he exhausted his avenues for relief, from the State Court's Judgment, to the extent that he then felt was warranted. To allow litigants to engage in a successive section 1983 claim, based on no more than their disagreement with an underlying State Court ruling, would effectively disembowel the *Rooker-Feldman* Doctrine.

As further proof of the inextricably entwining of the Plaintiffs' current Federal claims, with those resolved by the State Court, we need only note that each of the protests as to the Government Defendants' conduct with Fisher; with Aubut; with the preemptive razing of the Strand Theater, and of other buildings in December of 1998; with the dissemination of prejudicial pretrial publicity; with misrepresentations of fact; with violations of the Minnesota's bidding and contract laws; and with unprofessional conduct by the City's attorneys, and governmental agents; were expressly proffered to the State District Court, in December of 1999, in conjunction with Ringsred's request that the Court find the Government Defendants in Contempt of Court so as to be appropriately sanctioned. The State District Court rejected Ringsred's contentions, and denied the Motion to Show Cause why the Government Defendants should not be cited for contempt, or otherwise sanctioned.

We understand Ringsred to characterize the State Court's decision as, in effect, a deferral of any ruling. We disagree. The State District Court did not strike the Motions, or dismiss them as outside of the Court's subject-matter jurisdiction.

> Rather, the Court denied the motions, explaining that many were ill-founded on incompetent or insufficient evidence, or were better suited to a disposition in criminal, or in professional disciplinary proceedings.

R & R, pp. 39-41.

Ringsred does not put forth an argument in his current petition rebutting the lower court's holding that his cause of action is dismissed for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine. Ringsred in his appeal to the Eighth District Court of Appeals claimed that the *Rooker-Feldman* doctrine should not apply because the actions of the state government abuse are similar to the types of actions which led to the enactment of the Ku Klux Klan Act of 1871. Such is not the case here. However, as the District Court has so aptly pointed out where the appellant seeks through Federal Court action to enforce a State Court judgment, the *Rooker-Feldman* action does apply.

At the conclusion of the trial in State District Court, Judge Hallenbeck issued extensive findings of fact and conclusions of law, finding that a historic district did exist, but that the project could proceed. *Findings of Fact, Conclusions of Law, and Order for Judgment*, St. Louis County File No. C3-98-601186, dated October 5, 1998. *Dckt. #51, Ex. 1.* Mr. Ringsred appealed Judge Hallenbeck's decision. *Dckt. #51, Ex. 2.* Ringsred did not identify as grounds for appeal any of the basis he now asserts against Respondents, i.e., the alleged improper threat by Schwerdt against Ringsred, the alleged improper pretrial meetings, the alleged improper rally in support of the Tech Village project, the alleged improper news advertisements, and the alleged improper passing on of threats to witness

Sheldon Aubut. *Id.* On August 5, 1999, the Court of Appeals denied Ringsred's appeal and affirmed Judge Hallenbeck's decision. *Dckt. #51, Ex. 5.*

On December 27, 1999, Ringsred moved Judge Hallenbeck for an order to show cause and for award of sanctions based upon alleged acts of civil contempt. *Dckt. #51, Ex. 6.* In that Motion for Sanctions, Ringsred alleged many of the same actions which are the basis for the claims in this Federal suit. *Id.* The State Court judge heard argument on this issue and expressly denied Ringsred's request for civil contempt based on such allegations. *Dckt. #51, Ex. 7.* Ringsred did not appeal this order, but, instead, brought this action in Federal Court.

"U.S. district courts have no jurisdiction over challenges to state court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 1304, 75 L.Ed.2d 206 (1983).

> If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision, whether right or wrong, was an exercise of jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding.

Rooker v. Fidelity Trust Co., 263 U.S. 413, 415, 44 S.Ct. 149, 150, 68 L.Ed. 362 (1923).

Here, Ringsred failed to follow the proper appeal procedure of appealing the order of the state district court to the state court of appeals. The U.S. Supreme Court

prohibits Ringsred from now bringing his claims in the federal courts.

Ringsred cannot now relitigate this case under the guise of a Section 1983 action. Labeling a suit as a § 1983 action alleging due process violations does not automatically remove the bar to suit in federal court. *Maple Lanes, Inc. v. Messer,* 186 F.3d 823, 825 (7th Cir. 1999), *cert. denied,* 120 S.Ct. 939 (2000). The *Rooker-Feldman* action was designed to address situations such as this where, as here, Ringsred is alleging the same facts and circumstances as had been litigated in the State Courts. Ringsred also claims that the District Court misinterprets the State Court's decision. Ringsred alleges that his claims have not been litigated in State Courts because the actions he is complaining of occurred after the trial in State Court and the appeal. Ringsred claims that the underlying basis for this has to do with the violation of the State Court injunction. Ringsred, however, admits that he has raised this issue before the State Court. *See, Appellant's Brief to the Eighth Circuit Ct. of Appeals, p. 17.* The Federal Court has not misinterpreted the State Court's decision but has correctly noted that if there is a state court injunction, it is not up to the Federal Courts to enforce it. Ringsred cannot now bring a civil right's claim because he did not like the results of the underlying State District Court's decision.

While the State Court's decision did state that other forums may be more appropriate for some of these claims, the Court also dismissed most, if not all, of Ringsred's claims based on the fact that many, if not all, of the complaints alleged in the post-trial motion were significantly hearsay in nature and lacked specificity. *See Memorandum in Support of Order Regarding Motion for Order to Show Cause in Contempt,* paragraphs 2, 3, 6, 8, 9, 10, 12, 13, 14

and 15, *Dckt. #51, Ex. 7.* Thus, in large part, the dismissal of these very same issues in State Court was based upon the fact that they were hearsay and lacked the specificity necessary to state a claim.

Ringsred did not appeal this Order. Ringsred cannot now bring these identical claims which, a review of the Complaint and evidence before the Court will show, are still hearsay, are still vague in nature and incapable of stating a cause of action upon which relief can be granted, even if the *Rooker-Feldman* doctrine did not apply.

CONCLUSION

The Petitioner's petition for Writ of Certiorari should be denied because it fails to state a compelling reason for granting the petition. Petitioner lacks subject matter jurisdiction under the *Rooker-Feldman* doctrine and standing to assert the Constitutional rights of access to the courts, due process, or equal protection.

Dated: November 19, 2002

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No. 02-609

Supreme Court, U.S.
FILED
NOV 20 2002
CLERK

In The
Supreme Court of the United States

ERIC RINGSRED, AN INDIVIDUAL,

Petitioner,

vs.

(1) CITY OF DULUTH, A MUNICIPAL CORPORATION; AND THE FOLLOWING CITY OFFICIALS INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES: (2) GARY L. DOTY, MAYOR; (3) CYNTHIA ALBRIGHT, ASSISTANT CITY ATTORNEY; (4) BRYAN BROWN, CITY ATTORNEY; (5) ROBERT ASLESON, ASSISTANT CITY ATTORNEY; (6) JOHN SCHWEIGER, SPECIAL PROJECTS MANAGER; (7) JOHN SMEDBERG, ASSISTANT CITY ATTORNEY; (8) DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND ITS DIRECTOR, CYNTHIA ALBRIGHT, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY; (9) TEAM DULUTH; (10) SOFT CENTER-DULUTH, INC.; (11) MICHAEL MCNAMARA; (12) THE DULUTH AREA CHAMBER OF COMMERCE AND (13) ITS CEO DAVID ROSS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

GOVERNMENT RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Did the lower court correctly hold that the Minnesota Environmental Rights Act does not create a liberty or property interest protected by the procedural due process clause of the Fourteenth Amendment?

Did the lower court correctly hold that the *Rooker-Feldman* doctrine presented a subject matter jurisdictional bar to Ringsred's First Amendment claim?

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STATEMENT OF THE CASE

The matter *sub judice* has as its genesis a redevelopment project in a portion of downtown Duluth. This project is known variously as the "Soft Center Project" or the "Technology Village" and consists of an office complex located on Superior Street, a parking ramp located on First Street, and a skywalk which to date has not been built. In an effort to stop this project Eric Ringsred commenced an action in the State of Minnesota District Court, St. Louis County, Sixth Judicial District, in September of 1998. *See, State of Minnesota by Eric Ringsred v. City of Duluth, et al.*, 1999 WL 618613 (Minn.App., August 17, 1999); St. Louis County File No. C3-98-601186. In that state action Ringsred sought to prevent the demolition of various structures located in downtown Duluth, Minnesota, which were slated for removal as part of the Soft Center Project. Ringsred asserted his claim pursuant to the Minnesota Environmental Rights Act ("MERA"). *Minn.Stat.Chpt. 116B.* He also sought the recognition of downtown Duluth as a natural resource. The Report and Recommendation of Magistrate Judge Erickson contains a full statement of the background facts of this litigation and will not be repeated here. *Docket No. 118.* However, Government Respondents will summarize the state court proceedings because it is the fairness of these proceedings which form the essential core of the questions presented for review.

Trial commenced in the state district court on September 24, 1998, and concluded October 2, 1998. *Appellants' Appendix before the Eighth Circuit Court of Appeals at 102-146, Findings of Fact, Conclusions of Law, Order for Judgment.* The state trial court found that the Soft Center Project consisted of the construction of the office

building and the associated parking ramp and skywalk system. It further concluded that this location was within an area of downtown Duluth which was eligible for protection under state law as an historic resource. The court concluded that the evidence presented at trial provided the necessary factual basis for an environmental review, and the court performed the review required by MERA. Ultimately the trial court concluded that no feasible alternative to demolition existed. Thus, while Ringsred was successful in achieving recognition of a portion of downtown Duluth as an historic resource protected under MERA, he was unsuccessful in halting the demolition of the buildings on Superior and First Streets which were slated for removal as part of the Soft Center Project.

Ringsred appealed to the Minnesota Court of Appeals which affirmed the district court. *State of Minnesota by Eric Ringsred v. City of Duluth, et al.*, 1999 WL 618613 (Minn.App., August 17, 1999). In his state court appeal Ringsred failed to assert a procedural due process challenge. While his state court appeal was pending, the buildings slated for demolition and located on Superior Street were demolished. The First Street buildings were scheduled for demolition but had not yet been demolished.

On December 28, 1998, while his appeal to the Minnesota Court of Appeals was pending, Ringsred returned to the state district court and sought to enjoin demolition of the First Street buildings. *Docket No. 51, Ex. 3.* He claimed that the buildings were historical resources and that the appropriate environmental review had not been conducted. He asserted this argument even though the state district court, in its Findings and Conclusions, had determined that the trial served as an appropriate review

of the relevant issues. On that same date, the state district court denied Ringsred's motion. In its Memorandum the district court noted that "Plaintiff has failed to comply with the requirements of Rule 65 of the Minnesota Rules of Civil Procedure . . . Plaintiff has submitted no affidavit whatsoever in support of his claim of need for the Temporary Restraining Order. Plaintiff has submitted no sworn factual allegation of non-compliance with this Court's order of October 5, 1998." *Docket No. 51, Ex. 4, pg. 3/3.* Demolition of the First Street buildings began on the same date. Ringsred did not appeal.

A year later, Ringred returned to the state district court. This time he moved for an order to show cause finding the City of Duluth, DEDA, Mayor Gary Doty, Karl Nollenberger, Darrell Lewis and A&L Development, Inc. in contempt of court. *Docket No. 51, Ex. 6.* In his motion Ringsred alleged contempt of the judicial process, and violation of the Order. He claimed various procedural irregularities with regard to the trial and for a third time challenged the propriety of the demolition of the First Street buildings. This time he alleged that the demolitions proceeded in violation of various state laws related to bidding practices and local permitting requirements. His motion was denied in an Order filed January 10, 2000. Ringsred did not pursue an appeal.

Nine months later Ringsred commenced the action *sub judice* in which, for the second time, he raises allegations of procedural irregularities and for the fourth time challenges the demolition of the First Street buildings. This time, however, he claims a property interest in the historic district and claims that the demolition of the First Street buildings deprived him of that property interest

without due process. He further claims a First Amendment violation arising from the procedural irregularities allegedly occurring during the state trial, which he failed to raise during his state court appeal.

In his Complaint he again asserts all of the allegations which formed the basis of the contempt proceedings before the state district court. He pursued the action as a civil rights claim and relied upon the procedural mechanism set forth in 42 U.S.C. § 1983. He sued on his own behalf and on behalf of his family and the State of Minnesota. Ringsred's wife, Deborah Ringsred, also sued.[1] The Complaint was divided into five Counts and pled in a confusing manner. Generally, in the First Count Ringsred asserted a procedural due process challenge to the same state court proceedings which were the subject of his appeal to the Minnesota Court of Appeals; the Second Count was essentially a claim asserting an Equal Protection Challenge under the Fourteenth Amendment to the United States Constitution and challenged the manner in which public funds were spent in support of the Soft Center Project; the Third Count alleged violations of various state laws and Ringsred relied upon his status as a taxpayer to pursue this unidentified cause of action; the Fourth Count challenged various litigation tactics in the state proceeding as violative of First Amendment guarantees; in the Fifth Count Ringsred asserted unidentified claims on behalf of his family.

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[1] The Ringsred children were dismissed as parties on April 25, 2001. *Docket No. 52.*

The Defendants included a number of individuals, several non-profit corporations and two governmental entities. For simplicity the parties and district court divided the Defendants into three groups as follows: Defendants City of Duluth, Gary L. Doty, Cynthia Albright, Bryan Brown, Robert Asleson, John Schweiger, John Smedberg, and Duluth Economic Development Authority were identified as the "Government Defendants."

Defendants Team Duluth, Duluth Area Chamber of Commerce and David Ross, were identified as the "Chamber Defendants."

Defendants Soft Center-Duluth, Inc. and Michael McNamara were identified as the "Soft Center Defendants."

Ringsred asserted the existence of a property right in the historic district, sought monetary damages for the alleged harm caused to this property interest by the demolition of the First Street buildings, sought damages for alleged harm caused by the way the Soft Center Project was being managed, and in his prayer for relief asked the federal court to interfere in the state court's administration of its orders.

Government Defendants each filed their Separate Answers and on April 24, 2001, Government Defendants filed their Motions to dismiss or for summary judgment. *Docket No. 48.* All Government Defendants sought dismissal pursuant to Rule 41(b), Fed.R.Civ.P. arguing that the Complaint violated Rule 8, Fed.R.Civ.P. In the alternative, these defendants challenged subject matter jurisdiction and sought dismissal pursuant to Rule 12(b)(1), asserted that the Complaint failed to state claims upon

which relief could be granted and sought dismissal pursuant to Rule 12(b)(6). Those Government Defendants sued in their individual capacity also sought summary judgment pursuant to Rule 56, Fed.R.Civ.P. and asserted the qualified immunity defense.

All dispositive motions as well as other related non-dispositive motions of a procedural nature were referred to Magistrate Judge Raymond Erickson for his report and recommendation. On October 22, 2001, Magistrate Erickson issued his Report and Recommendation granting Government Defendants' motion to dismiss pursuant to Rule 12(b)(1) and (6). Magistrate Erickson did not address Government Defendants' summary judgment motion deeming it moot given the recommendation to dismiss on jurisdictional grounds.

Plaintiffs objected to the Report and Recommendation On November 26, 2001, Judge Richard Kyle overruled the objections, adopted the Report and Recommendation dismissed the claims against the Government Defendants with prejudice, dismissed the state claims without prejudice, and granted the remaining defendants their motions for summary judgement. *Docket No. 126.*

Ringsred appealed to the Eighth Circuit Court of Appeals. He limited his appeal to the dismissal of those claims asserted in the First and Fifth Counts of the Complaint. In an unpublished decision the Eighth Circuit affirmed, *per curiam*. This petition followed.

SUMMARY OF ARGUMENT

The Minnesota Environmental Rights Act does not create a liberty or property interest. The lower court correctly concluded that Ringsred lacked standing to pursue a procedural due process claim in the absence of such liberty or property interest.

Because Ringsred's First Amendment claims were a poorly disguised effort to challenge the decisions of the Minnesota Courts, the lower court properly concluded that the *Rooker-Feldman* doctrine served as a subject matter jurisdictional bar.

ARGUMENT

Because The Minnesota Environmental Rights Act Does Not Create Liberty Or Property Interests The Federal Courts Lacked Subject Matter Jurisdiction To Entertain Ringsred's Section 1983 Claims.

The Petitioner has incorrectly articulated the holding of the lower court. Ringsred believes the lower court held that a public interest litigant is not entitled to procedural due process as guaranteed by the Fourteenth Amendment to the United States Constitution. The lower court did not so hold; rather, it held that it lacked subject matter jurisdiction to entertain the Section 1983 claim because the state law relied upon by Ringsred did not create a liberty or property interest.

The supporting reasoning is found in the Magistrate's Report and Recommendation which was adopted by the District Court without modification. In his Report and Recommendation, Magistrate Erickson held that the court

lacked subject matter jurisdiction because "Ringsred's claim does not survive the first prong of the analysis, as we find no property, or liberty interest, which, under the circumstances presented, was personally held by Ringsred." *Appendix to Petition at pg. 22.*

In his Petition before this Court Ringsred ignores the precedents of this Court which set forth the elements necessary to support a due process claim actionable pursuant to 42 U.S.C. § 1983. Section 1983 does not provide a remedy for abuses that do not violate Federal law. *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 120, 112 S.Ct. 1061, 1065 (1992). Here, Ringsred seeks review of the dismissal of his due process claim.

This Court examines procedural due process question in two steps. The first inquiry consists of determining whether there exists a liberty or property interest which the defendant has denied to that plaintiff. *Kentucky Dept. of Corrections v. Thomson*, 490 U.S. 454, 460, 109 S.Ct. 1904, 1908 (1989); *Board of Regents of State Colleges v. Roth*, 408 U.S. 565, 571, 92 S.Ct. 2701, 2706 (1972). "[T]he second examines whether the procedure attendant upon that deprivation were constitutionally sufficient." *Kentucky Dept. of Corrections*, 490 U.S. at 460, 109 S.Ct. at 1908. The lower court did not reach the second prong of the inquiry because it concluded that Ringsred's claim failed the first prong of the inquiry. *Appendix to Petition, pgs. 22-23.*

"The types of interests that constitute 'liberty' and 'property' for Fourteenth Amendment purposes are not unlimited; the interest must rise to more than 'an abstract need or desire' and must be based on more than 'a unilateral hope.'" *Kentucky Dept. of Corrections*, 490 U.S. at 460, 109 S.Ct. at 1908. "An individual claiming a protected

interest must have a legitimate claim of entitlement to it." *Id.*

The lower court did not, as Ringsred argues, conclude that a public interest litigant is not entitled to the protections of due process. Rather, it concluded that MERA grants to individuals the right to litigate matters of public interest, but does not create in that particular litigant a personal liberty or property interest. The lower court properly noted that the claim pursued by Ringsred in the state court was pursued on behalf of the State of Minnesota and not in Ringsred's individual capacity. The lower court also properly noted that a State is not entitled to protection under either the Fourteenth Amendment, or Section 1983. *Appendix to Petition at pg. 23, n. 16.* While it is undisputed that a liberty or property interest may be created by state law, *Kentucky Dept. of Corrections*, 490 U.S. at 460, 109 S.Ct. at 1908, the state law which Ringsred identifies as the source of his asserted personal liberty or property interest does not in fact create such an interest. Ringsred fails to cite to any authority supporting the proposition that the Minnesota Legislature, in enacting MERA, intended to vest in an individual pursuing a claim under the Act a property or liberty interest. He in fact ignores this issue and instead confuses the basis upon which the lower court dismissed his due process claims with the reasons for the dismissal of his First Amendment claim.[2]

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[2] Ringsred attempts to demonstrate the existence of a property right which is personal to him by citing to a leasehold interest he held in one of the buildings demolished for the project. He fails to advise this Court that the leasehold interest in question was not located in any o

(Continued on following page)

Instead he argues that the decision of the lower court ignores this Court's decision in *Logan v. Zimmerman Brush Co.*, 455 U.S. 432, 102 S.Ct. 1148 (1982). The reliance on *Logan* is misplaced.

Logan involved a plaintiff who was denied a post-termination proceeding as the result of the state court's statutory interpretation. The plaintiff challenged the fairness of the state's statutory scheme. The Supreme Court held that the state's procedural scheme served to deprive the plaintiff of procedural due process violative of federal constitutional guarantees. *Id.*, 455 U.S. at 436-37, 102 S.Ct. at 1158-59. The plaintiff did not argue as Ringsred attempts to do that the state law created a property or liberty interest. Instead the interest at issue in the state proceeding was a property interest in his employment. The question presented in the federal court was whether the state proceeding provided a fair process for the resolution of the dispute over the loss of his property interest in employment. The holding in *Logan* is not precedential here because the issues presented and the context in which they arose are unrelated to the asserted interest claimed by Ringsred. Ringsred has failed to demonstrate that the decision below contravenes the holding of *Logan*.

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the structures which he claims were demolished in violation of the state court order. Nor does he articulate how such an interest in and of itself is a property interest in an historic district which is protected by the United States Constitution. His failure to present an accurate assertion with regard to this property interest and his failure to clarify how this asserted leasehold interest creates a property interest in public interest litigation serves as a basis to deny the petition. *See, Supreme Court Rule 14(i)(4).*

Even if the lower court had concluded that a liberty or property interest existed in this public interest litigation, dismissal was appropriate because Ringsred failed to challenge the alleged procedural irregularities in the state court. It is not enough for a plaintiff to demonstrate that a state law creates rights for which procedural protections are afforded. A plaintiff asserting a procedural due process claim must also challenge the adequacy of state procedures. *Hudson v. Palmer*, 468 U.S. 517, 104 S.Ct. 3194, 3204 (1984). Even if the adequacy of those procedures is challenged, a plaintiff is barred from asserting these claims in federal court if they failed to raise the challenge in the state proceeding. *Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75, 104 S.Ct. 892, 898 (1984).

Here, Ringsred, unlike the plaintiff in *Logan*, did not challenge the adequacy of the state procedures, nor if such inadequacies existed, did he pursue them during the pendency of the state proceedings. Thus, his cause of action fails to satisfy the second question of the procedural due process test.

Ringsred has failed to demonstrate that the dismissal of his due process claim is inconsistent with this Court's precedent and has failed to demonstrate conflict with other circuits. His petition, to the extent that he seeks review of his procedural due process claim, should be denied.

The Lower Court Correctly Applied The *Rooker-Feldman* Doctrine And Properly Dismissed The First Amendment Claim On Jurisdictional Grounds.

Ringsred argues that the lower court dismissed his First Amendment claim because he lacked a liberty or

property interest sufficient to pursue such a claim. This argument ignores the basis upon which the lower court concluded that it lacked subject matter jurisdiction over the First Amendment claim and presents a mistaken assertion that the lower court failed to recognize a right to pursue litigation as an aspect of the First Amendment right to petition for the redress of grievances.

In his Report and Recommendation Magistrate Erickson specifically recognized that Eighth Circuit precedent indisputably recognizes a constitutional right of access to the Courts and cited *Harrison v. Springdale Water & Sewer Commission*, 780 F.2d 1422 (8th Cir. 1986). *Appendix to Petition, pg. 27.*

However, the lower court held that Ringsred's claims could not be pursued in federal court, not because a right protected by the First Amendment does not exist, but because the allegations which supported this claim were already the subject of state court orders. Thus, the lower court concluded that the *Rooker-Feldman* doctrine deprived the federal court of subject matter jurisdiction over this claim.[3] *See, District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923).

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[3] Ringsred does challenge the alternative basis upon which the lower court dismissed this claim. As with the procedural due process claim, the court viewed Ringred's interest in the state litigation as representational and foreclosed by the Eighth Circuit decision in *Curtis v. Federal Deposit Insurance Corp.*, 866 F.2d 255 (8th Cir. 1989).

This doctrine presents a jurisdictional bar to constitutional challenges brought in federal court that are inextricably intertwined with claims asserted in state court. *Charchenko v. City of Stillwater,* 47 F.3d 981, 983 (8th Cir. 1995).

Here, Ringsred is using Section 1983 as a platform for his constitutional challenge to the fairness of the proceedings in the state court. *Rooker-Feldman* prohibits federal appellate review of state court proceedings and a litigant cannot circumvent the doctrine by recasting a lawsuit as a § 1983 action. *Keene Corp. v. Cass*, 908 F.2d 293, 297 (8th Cir. 1990). If the federal challenge is "inextricably intertwined" with specific claims already adjudicated in state court, the federal court lacks jurisdiction. *Lemonds v. St. Louis County*, 322 F.3d 488 (8th Cir. 2000).

Magistrate Erickson correctly identified the relationship between the Section 1983 claims and the state court proceedings as follows:

> The intertwining of Ringsred's current claims, and those he advanced in the State Court proceeding, cannot be seriously contested. If, as Ringsred continues to allege, the Defendants have violated the terms of a State Court Judgment, we can see no reason to allow Ringsred to ignore that Judgment, with impunity, and proceed with the same claims in a Section 1983 vehicle in Federal Court, in order that he may seek monetary damages, in substantial sums, which were unavailable to Ringsred in the State Court, for conduct that the State Courts found to be complaint [sic] with the State Court's Injunction, and with the governing law. While Ringsred may well be disappointed in the ruling of the Minnesota Courts, we do not sit as a Court of Appeals

> on State Court matters. Ringsred had full access to the State Court, and he exhausted his avenues for relief, from the State Court's Judgment, to the extent that he then felt was warranted. To allow litigants to engage in a successive Section 1983 claim, based on no more than their disagreement with an underlying State Court ruling, would effectively disembowel the *Rooker-Feldman* doctrine.

Report and Recommendation, pgs. 39-40.

Ringsred has failed to demonstrate that the dismissal of his claim on this jurisdictional ground conflicts with the decision of another circuit or with a relevant decision of this Court. Therefore, to the extent he seeks review of the dismissal of his First Amendment claim, the petition should be denied.

CONCLUSION

Ringsred has failed to demonstrate that there exists grounds for review as set forth in Rule 10(a), Supreme Court Rules. For all of the foregoing reasons, Government Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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Supreme Court, U.S.
FILED
NOV 21 2002
CLERK

No. 02-609

IN THE

Supreme Court of the United States

ERIC RINGSRED,

Petitioner,

v.

(1) CITY OF DULUTH, a municipal corporation; and the following City officials individually and in their official capacities; (2) GARY L. DOTY, Mayor; (3) CYNTHIA ALBRIGHT, Assistant City Attorney; (4) BRIAN BROWN, City Attorney; (5) ROBERT ASLESON, Assistant City Attorney; (6) JOHN SCHWEIGER, Special Projects Manager; (7) JOHN SMEDBERG, Assistant City Attorney; (8) DULUTH ECONOMIC DEVELOPMENT AUTHORITY and its Director, CYNTHIA ALBRIGHT, individually and in her official capacity; (9) TEAM DULUTH; (10) SOFT CENTER-DULUTH, INC.; (11) MICHAEL McNAMARA; (12) THE DULUTH AREA CHAMBER OF COMMERCE and (13) its CEO DAVID ROSS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS TEAM DULUTH, THE DULUTH AREA CHAMBER OF COMMERCE, MICHAEL McNAMARA, AND DAVID ROSS

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COUNTER STATEMENT OF THE CASE

Petitioner's claims are based on wide-ranging allegations that Respondents acted improperly to harm him during the course of his 1998 legal challenge to a downtown Duluth, Minnesota, development project referred to as the "Soft Center" or "Tech Village." In the name and on behalf of the State of Minnesota, Petitioner had sued the City of Duluth, a developer and others in State Court seeking to enjoin the project as violating state environmental laws. On behalf of the State, he claimed the project area was a protected historic resource that would be destroyed by the development and that the project should not proceed because development alternatives existed and proper environmental reviews had not been completed.

After a trial in which all of Petitioner's witnesses testified and testified truthfully, the State Court found the project area to constitute a protected natural resource and issued a mandatory injunction requiring the area to be treated as such in the future, but denied the request for injunctive relief finding there was no reasonable alternative to the planned development. The Minnesota Court of Appeals affirmed. The Trial Court later heard and denied a motion by Petitioner for contempt sanctions in which Petitioner argued that there had been misconduct by the defendants and others in that action related to the trial.

Petitioner and his wife then initiated this action asserting that the thirteen Respondents herein had improperly deprived Petitioner of a fair trial, harmed his reputation and violated the State Court mandatory injunction. In Count I, they asserted that Respondents had, under color of state law, acted to deprive them of their federal rights in violation of

42 U.S.C. § 1983. In Count II, they claimed Respondents had violated various state, federal and local laws. In Count III, they asserted that Respondents had unlawfully recruited businesses to the Soft Center. In Count IV, they claimed Respondents had acted to injure their reputation. And in Count V, they alleged that Respondents' actions had injured their family. They requested relief including an order compelling future compliance with the State Court mandatory injunction and an award of monetary damages.

The City Respondents filed a motion to dismiss or in the alternative for summary judgment.[1] Thereafter, the Soft Center Respondents and Chamber Respondents filed motions for summary judgment.[2]

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1. The City Respondents are comprised of all named Respondents other than the Chamber Respondents and Soft Center Respondents. The Chamber Respondents are the Duluth Area Chamber of Commerce, Team Duluth, David Ross and Michael McNamara. The Soft Center Respondents are Soft Center-Duluth, Inc. and Michael McNamara.

2. The Chamber Respondents' motion argued that Petitioner's denial of access to court claims were not actionable because the Chamber Respondents were not acting under color of state law, did not act in retaliation, were properly exercising their rights to free speech and did not deny Petitioner access to court. The motion further argued that Petitioner's allegations of harm to reputation, which were based on assertions that the Chamber Respondents placed ads in local newspapers and made statements at a rally, were legally deficient because they were barred by the applicable statute of limitations and because the alleged statements were not defamatory. Finally, the Chamber Respondents joined in the City Respondents' arguments that Petitioner lacked standing to assert his claims and lacked subject matter jurisdiction based on the *Rooker Feldman* doctrine.

The Magistrate Judge, by Order and Report and Recommendation dated October 22, 2001 (hereafter referred to as "Report"), recommended dismissal of Petitioner's claims. In doing so, the Magistrate Judge wrote

> [n]otably, the Plaintiffs allege no occasion when they were unable to present claims, or evidence in support of any claim, to the State Court, or which they have declined to advance a claim, make an argument, or otherwise petition a Court for relief, on account of some fear of retaliation at the hands of the Defendants.

Pet., App. at 16. The District Court adopted the Report and by Order of November 26, 2001, dismissed the complaint with prejudice. In an unpublished opinion, the Eighth Circuit Court of Appeals affirmed the dismissal of the federal claims with prejudice.

Petitioner here challenges only the dismissal of Count I of his complaint. The grounds for dismissal of that claim were not, as asserted by Petitioner, that public interest litigants have no constitutional rights. Rather, the actual holding was far narrower in scope.

Addressing Petitioner's claim that he had been deprived of due process, the District Court held that Petitioner had failed to establish the first element of a due process claim, i.e., the existence of a personal liberty or property interest. In support of that holding, the District Court explained that Petitioner had sued in State Court on behalf of the State of Minnesota and had made no showing of any personal property interest he was vindicating. It further found that if any liberty or property interest had been impaired, it had been the interest

of the State of Minnesota, and that the State did not join in Petitioner's Section 1983 claim nor was the State entitled to protections under either the Fourteenth Amendment or Section 1983. Next, addressing Petitioner's claim of denial of access to the courts, the District Court provided two alternative bases for dismissal; first, that the interests Petitioner was pursuing in State Court had been representational interests and not those he had a right to litigate on his own, and second, that the claim sought in practical effect to overturn the State Court decision and was therefore barred by the *Rooker Feldman* doctrine.

REASONS FOR DENYING THE PETITION

Petitioner argues that the decision below improperly holds that public interest litigants, such as persons suing on behalf of the public under state environmental legislation, have no constitutional rights regarding due process, equal protection, or fair access to courts when it comes to such litigation. According to Petitioner, such a holding conflicts with the recognition by this Court and by United States Courts of Appeal of the right to petition on matters of public concern, conflicts with this Court's recognition of a cause of action as a species of property, and therefore deprives private citizens in the Eighth Circuit of the right to petition not only on the state environmental laws involved in this case, but also on all other matters of public concern. The decision does not hold what Petitioner claims it does. The loss of private citizen rights envisioned by Petitioner arises from his erroneous interpretation of the ruling, not from the actual Eighth Circuit decision.

The decision below does not raise the question presented by the Petition. The question presented inquires into

Petitioner's personal rights. In contrast, the decision below arises from Petitioner's choice during the underlying State Court action to represent the interests of the State of Minnesota, not his own. The Eighth Circuit's decision properly recognizes that factual foundation and appropriately analyzes Petitioner's claims from that perspective. The Eighth Circuit decision does not conflict with a person's right to petition for redress or the recognition of a personal cause of action as a species of property. Rather, it merely confirms the District Court's narrow holding on the facts of this case that where a litigant chooses to sue on behalf of the State under the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act, the litigant stands in the shoes of the State.

I. THE DECISION BELOW DOES NOT PRESENT A CONFLICT ON THE RIGHT TO PETITION.

Petitioner asserts that the decision below conflicts with the decisions of this Court and of other United States Courts of Appeal on the right to petition. Petitioner is wrong.

The decision below expressly recognized the First Amendment right to petition the government for redress of grievances. Pet., App. at 27-28. The decision held, however, that Petitioner had no such personal right when he chose to sue in the name and on behalf of the State of Minnesota. That choice by Petitioner distinguishes the decision below from the allegedly conflicting decisions cited by Petitioner. None of the cases cited by Petitioner as conflicting with the decision below involve a plaintiff suing in the name of and on behalf of a state. Rather, all Petitioner's cited cases involve

plaintiffs attempting to obtain redress for grievances impacting their personal interests.[3]

II. THE DECISION BELOW DOES NOT PRESENT A CONFLICT ON THE RECOGNITION OF A CAUSE OF ACTION AS A SPECIES OF PROPERTY.

Petitioner is wrong in his assertion that the dismissal of his Section 1983 claim conflicts with this Court's holding that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. There

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3. *Lehmuller v. Incorporated Village of Sag Harbor*, 944 F. Supp. 1087 (E.D.N.Y. 1996) (employee claim against employer seeking personal relief for alleged employment discrimination and violation of Section 1983 right to petition); *White v. Lee*, 227 F.3d 1214 (9th Cir. 2000) (claims by three individuals seeking money damages and injunctive relief for alleged violation of First Amendment rights of free speech and right to petition); *Greenwich Citizens Committee, Inc. v. Counties of Warren and Washington Industrial Development Agency*, 77 F.3d 26 (2d Cir. 1996) (suit by individual citizens and incorporated citizens' committee against local government entities seeking to recover money damages for alleged violation of Section 1983); *Chambers v. Baltimore and Ohio Railroad Co.*, 207 U.S. 142 (1907) (claim by widow against railroad to recover money damages pursuant to wrongful death state statute that created individual cause of action for plaintiff's benefit); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972) (action by one group of trucking companies against another seeking money damages and injunctive relief for its own benefit under the Clayton Act); *Wayte v. United States*, 470 U.S. 598 (1985) (selective prosecution defense in criminal prosecution for failure to register in violation of the Military Selective Service Act); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982) (claim for damages by merchants who had been damaged as a result of civil rights boycotts); and *Connick v. Meyers*, 461 U.S. 138 (1983) (Section 1983 claim by former assistant district attorney against her employer alleging wrongful discharge as a result of her exercise of free speech, seeking reinstatement and damages).

is no conflict between the Eighth Circuit's decision and the decisions of this Court on that issue to support a grant of the Petition.

The decision below does not challenge the holding that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. Rather, it properly recognizes that Petitioner never possessed a cause of action to be protected. The underlying State Court cause of action belonged to the State of Minnesota, not to Petitioner.

Petitioner cites to alleged ownership and leasehold interests in the real estate at issue in the State Court action, presumably in an effort to establish that he had personal rights denied. Pet. at 15. However, the District Court properly analyzed those claims of personal interests, holding that Petitioner's claims were the claims of the State of Minnesota and that Petitioner had made no showing that he sought to vindicate any personal property interests in that action. Pet., App. at 23.[4]

To the extent Petitioner now asserts that the decision below ignores these claimed personal property interests, his asserted error falls in the category of an erroneous factual finding, i.e., an alleged failure to acknowledge that Petitioner was seeking to redress his ownership and leasehold interests

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4. The State Court lawsuit was captioned, in part, "State of Minnesota, by Eric Ringsred." Pet., App. at 81. Additionally, the State Court Findings of Fact, Conclusions of Law, and Order for Judgment contain no findings establishing ownership or leasehold interests held by Petitioner in the real estate at issue and no request by or grant to Petitioner for relief related to personal interests. Dkt. No. 96, Ex. C.

in the State Court action. An erroneous factual finding does not often constitute grounds for the grant of a petition and Petitioner here provides no reason why his challenge should be an exception to the rule. *See* Rule 10, Rules of the Supreme Court of the United States.

III. THIS CASE DOES NOT HAVE FAR REACHING PUBLIC INTEREST LITIGATION IMPLICATIONS.

Petitioner argues that the decision below has deprived all citizens in the Eighth Circuit of the right to petition or litigate on matters of public concern. Pet. at 16, 17. If that were so, there could be few cases more worthy of review. But Petitioner misinterprets and greatly overstates the impact of the decision. The decision is a narrow one. It construes the rights created by two Minnesota state statutes and, applying those rights to the facts, determines that Petitioner's choice to prosecute the State Court action in the name of the State clothes him with the rights of the State, no more.

Petitioner is mistaken in his belief that citizens no longer have the right to litigate under the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act. They can do so on behalf of the State as Petitioner did and they can obtain relief for the State as Petitioner did. They cannot, however, seek to personally profit from that litigation. If to profit from his activities is a right Petitioner would like to see exist for future challenges under the Minnesota Environmental Rights Act or the Minnesota Environmental Policy Act, then his avenue to relief is to lobby the Minnesota State Legislature to amend those state environmental laws to grant him such rights.

Petitioner's argument that citizens in the Eighth Circuit can no longer litigate other public interest issues, including zoning, taxation and others, is based on nothing but Petitioner's erroneous reading of the decision below. The lower Courts' interpretations of rights available under the Minnesota Environmental Rights Act and the Minnesota Environmental Policy Act do not preclude those challenges.

CONCLUSION

For the reasons stated herein, Respondents Team Duluth, The Duluth Area Chamber Of Commerce, Michael McNamara and David Ross respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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ERIC RINGSRED, an individual,

Petitioner,

vs.

(1) **CITY OF DULUTH**, a municipal corporation; and the following City officials individually and in their official capacities: (2) Gary L. Doty, Mayor; (3) Cynthia Albright, Assistant City Attorney; (4) Brian Brown, City Attorney; (5) Robert Asleson, Assistant City Attorney; (6) John Schweiger, Special Projects Manager; (7) John Smedberg, Assistant City Attorney (8) **DULUTH ECONOMIC DEVELOPMENT AUTHORITY**, and its Director, Cynthia Albright, individually and in her official capacity; (9) **TEAM DULUTH**; (10) **SOFT CENTER-DULUTH, INC.**; (11) Michael McNamara; (12) **THE DULUTH AREA CHAMBER OF COMMERCE**, and (13) its CEO David Ross,

Respondents.

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On Petition For Writ of Certiorari To The United States Court of Appeals For The Eighth Circuit

REPLY TO RESPONDENTS' BRIEFS IN OPPOSITION

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6 pp

I.
Petitioner's Constitutional Claims

Respondents skillfully argue, that Petitioner has misinterpreted the exact meaning and breadth of the lower court's decision . One of them, the City of Duluth, has actually re-formed Petitioner's question, in page i of its Brief in Opposition.

But even under the narrowest possible reading of the lower court's decision, this much is quite clear: The Court held that citizens like E. Ringsred have no constitutional rights of due process, nor free access to court, when litigating environmental issues under M.S. 116B and 116D.

Even this narrow interpretation of the lower court holding is worthy of Supreme Court review. . . for it means that local government may harass, intimidate, retaliate and ignore lawful procedures, as Ringsred alleges, when challenged by a citizen under these Minnesota statutes.

Respondents argue in their briefs, as if it would somehow justify the lower court's ruling, that it really does not apply to other types of "public interest" litigation.

Nothing expressed in the lower court's holding so limits it, to only these two Minnesota Statutes.[1]

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[1]Note a difference between MERA and MEPA: Under MERA a person requests relief "in the name of the state of Minnesota" (M.S. 116B.03, Apx. pp. 57), but under MEPA persons sue for relief on their own behalf (M.S. 1116D.04, subd. 11, Apx. p. 79). Ringsred sued the City under both (*see* Apx. pp. 8-9)..

To the contrary, the lower court opinion does not draw a line of demarcation between litigation under M.S. 116B or 116D, as opposed to all other state laws. Rather, it draws the line for constitutional protection between litigants pursuing personal interests versus those representing broad public interests.

"Representational interests", as "shared by every citizen of the state," are the exact words of the lower court in defining litigation which is not constitutionally protected (Apx. pp. 23 and 24):

> [A]ny property, or liberty interest held by Ringsred, in prosecuting that case, was of a type shared by every citizen of the State of Minnesota, in whose stead he litigated the case.
>
> * * *
>
> The Plaintiffs' claimed denial of access to the Courts can fair no better, as the interests that Ringsred was pursuing in these State Courts were representational interests, and not those he had a right to litigate in his own stead.

Under this legal precept, coined by the lower court as "a matter of first impression," it is clear that many other activities would be stripped of constitutional protection, such as taxpayers suing to protect the public treasury as allowed under many states' laws, or petitioning for a referendum to enact or repeal general legislation.

Whether broadly or narrowly construed, this lower court ruling strikes at the heart of the First and Fourteenth Amendments, and is worthy of Supreme Court review.

II.

Respondents Raise the Issue of Jurisdiction Over the Subject Matter, Under the *Rooker-Feldman* Doctrine

This is an important federal question of broad applicability: **Does the Federal Court have any jurisdiction to rule as it did, upon Petitioner's constitutional issue, after the same Court itself had determined it lacked jurisdiction over the subject matter, by reason of the *Rooker-Feldman* Doctrine?**

The answer would seem obvious: **The lower court may not rule where it does not possess the requisite jurisdiction.**

But it did rule. The federal judiciary in this case, a magistrate, district court judge and three appeals judges unanimously rejected this fundamental jurisdictional question, which was specifically raised in Petitioner's Appeal to the Eighth Circuit as Issue No. 1 (Case 02-1242 Appellant's Opening Brief filed 3/14/02, pp. 9, 10).

The fundamental nature of this jurisdictional issue, its unanimous rejection by the lower court judges, and the certainty that it will recur – all make this an important question for Supreme Court review and correction.

In the specifics of this case, the District and Eighth Circuit courts have ruled that Ringsred's constitutional claims conflicted with a prior state court judgment, thus depriving the Federal Court of subject matter jurisdiction under the *Rooker-Feldman* Doctrine.

The relevant facts are few and simple: a single page "conclusion" written by the State Court itself settles the *Rooker-Feldman* issue.

Directly addressing Petitioner's allegations of municipal wrongdoing (in a motion for contempt) the State Court takes a neutral position and suggests Ringsred seek "separate proceedings" to resolve those allegations. (Apx. pp. 87-8.) That is exactly what Petitioner has done.

The important and definitive single page "conclusion" by the State Court states:

> In reviewing Plaintiff's allegations the Court does not mean to suggest it has determined any of them to be valid or invalid.
>
> * * *
>
> Many of the issues which Plaintiff raises could well be the subject of separate proceedings subject to the rights and responsibilities of the parties under our Rules of Procedure including those applicable to discovery.

Respondents and the lower court engage a detailed, wide ranging, mostly irrelevant factual analysis which ignores and contradicts the State Court's position, articulated above, in the only instance where allegations of city wrongdoing were brought before it.

However as discussed earlier, if *Rooker-Feldman* indeed does apply as Respondents argue, the Federal Courts have no jurisdiction over the subject matter constitutional claims. The Federal Court should not have issued an advisory opinion on its "matter of first impression."

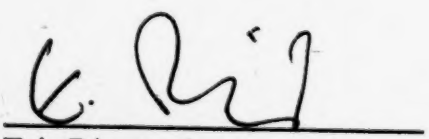
Worse yet, the District Court dismissed Ringsred's federal claim **with prejudice**, the meaning of which is totally unclear because Rule 41(b) states that dismissals for lack of jurisdiction do not operate as an adjudication on the merits.

Both the holding on the subject matter and the dismissal "with prejudice" by the Federal Court is certain to wreak confusion when Petitioner brings this case back to the Minnesota state courts – which he is entitled to do, as there is no preclusion under Federal or Minnesota law against bringing a prior suit which was dismissed on jurisdictional grounds – *See Costello v. United States*, 365 U.S. 265, 81 S.Ct. 534 (1961); and also *G.A.W. v. D.M.W.*, 596 N.W. 2d 284, 287 (Minn. App. 1999) which reiterates that both *res judicata* and collateral estoppel require a final judgment on the merits.

In the current posture of this case, the Supreme Court must either gain jurisdiction of the subject matter constitutional issue by reversing the lower court's invocation of the *Rooker-Feldman* Doctrine, which it may review *de novo*; or in the alternative, vacate the lower court decision on the subject matter for lack of jurisdiction.

Either way, the lower court's decision must fall.

Dated December 16, 2002



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